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**THE PATENTS, DESIGNS, AND TRADE
MARKS ACT, 1883.**

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THE
PATENTS, DESIGNS, AND TRADE
MARKS ACT, 1883.

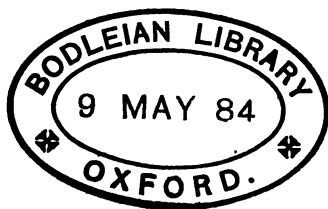
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PREFACE.

THE Patents, Designs, and Trade Marks Act, 1883 (46 & 47 Vict. c. 57), amends and consolidates into a single Act, with the exception of the unrepealed sections of the Statute of Monopolies (21 James I. c. 3) and the Merchandise Marks Act, 1862 (25 & 26 Vict. c. 88), the various statutes relating to patents, designs, and trade marks. These, twenty-two in all, have been wholly repealed, as far as they relate to patents, designs, and trade marks.

For many years the necessity of a change in the law has been recognised, especially with regard to letters patent for inventions, and the matter has been frequently the subject of discussion in various scientific societies. Among these the Society of Arts deserves especial mention for the draft bill prepared by its committee, many of the clauses of which were substantially incorporated into the Act. Those who are responsible for the Act had also the benefit of the evidence taken before, and the reports of the Royal Commission of 1865 (*a*), and the Select Committees of the House of Commons of 1871 (*b*) and 1872 (*c*), which are specially worthy of note, because of the eminence and experience of the witnesses examined. A reference to these reports will explain many of the reasons for the changes effected by the Act, as, for instance,

(*a*) Report of the Commissioners appointed to inquire into the working of the law relating to letters patent for inventions, 1865.

(*b*) Report from the Select Committee on letters patent, together with the proceedings of the Committee, minutes of evidence, appendix of index, 1871.

(*c*) *Ibid.*, 1872.

the grant of compulsory licenses and the appointment of examiners.

The aim of the framers of the Act has been to lessen the cost and simplify the procedure in connection with the taking out of letters patent and the registration of designs and trade marks. The result is generally admitted to be satisfactory, although nothing can at present be said as to the manner in which the duties of the examiners of patents will be performed.

It has been urged that the payments subsequent to the grant of letters patent are calculated to restrain the progress of invention, inasmuch as, being largely in excess of the amounts required for the working of the Patent Office, they impose a direct tax upon a special class. If this be the case, a remedy is provided by the Act without the necessity of further legislation, for by s. 24, sub. 2, the Board of Trade may from time to time, if they think fit, with the consent of the Treasury, reduce any of the prescribed fees.

The Act has been so framed that the author has been enabled to make use of it as the text. References to the rules indicated by figures, and explanatory notes and notes of decided cases by letters, are appended to the sections. To avoid inconveniently increasing the size of the book, such notes as are common to several sections have frequently been inserted under only one of them, and a reference given to the section or sections under which the remainder may be found. Such matter as could not conveniently be inserted in this way appears in the introductory chapter. It is hoped that the General Index which has been carefully prepared will afford the means of remedying any inconvenience which may result from the method which has been adopted.

ABBREVIATIONS.

A. & E., <i>or</i> Ad. & El.	Adolphus and Ellis' Reports.
B. & A.	Barnewall and Adolphus' Reports.
B. & Ald.	Barnewall and Alderson's Reports.
B. & C.	Barnewall and Cresswell's Reports.
Beav.	Beavan's Reports.
B. & S.	Best and Smith's Reports.
Bing. N. C.	Bingham's New Cases.
B. & P.	Bosanquet and Puller's Reports.
C. B.	Common Bench Reports.
C. B. (N. S.)	Common Bench Reports, New Series.
C. & K.	Carrington and Kirwan's Reports.
C. & P.	Carrington and Payne's Reports.
Cl. & Fin.	Clark and Finelley's Reports.
C. M. & R.	Crompton, Meeson and Roscoe's Reports.
Coop. C. C.	Cooper's Chancery Cases.
Dav. P. C.	Davis' Patent Cases.
Dan. & L.	Danson and Lloyd's Mercantile Cases.
De G. F. & J.	De Gex, Fisher and Jones' Reports.
De G. & J.	De Gex and Jones' Reports.
De G. M. & G.	De Gex, Macnaghten and Gordon's Reports.
De G. J. & S.	De Gex, Jones and Smith's Reports.
E. & B., <i>or</i> El. & Bl.	Ellis and Blackburn's Reports.
Exch.	Exchequer Reports.
Giff.	Giffard's Reports.
H. Bl.	H. Blackstone's Reports.
H. & M.	Hemming and Miller's Reports.
H. L. C.	House of Lords Cases.
Holt N. P. C.	Holt's Nisi Prius Cases.
H. & N.	Hurlstone and Norman's Exchequer Reports.
H. B. <i>or</i> H. Bl.	Henry Blackstone's Reports.

Johns.	Johnson's Reports.
Jur. (N. S.).	Jurist, New Series.
K. & J.	Kay and Johnson's Reports.
L. J. Ch.	Law Journal Reports, Chancery.
L. J. C. P.	Law Journal Reports, Common Pleas.
L. J. Ex.	Law Journal Reports, Exchequer.
L. J. Q. B.	Law Journal Reports, Queen's Bench.
App. Cas., or L. R. App. Cas.	The Law Reports, Appeal Cases.
Q. B. D., or L. R. Q. B. D.	The Law Reports, Queen's Bench Division.
L. R. Ex.	The Law Reports, Exchequer.
Ch. D., or L. R. Ch. D.	The Law Reports, Chancery Division.
L. R. Ch.	The Law Reports, Chancery Appeals.
L. R. Eq.	The Law Reports, Equity Cases.
L. R. P. C.	The Law Reports, Privy Council.
L. R. H. L.	The Law Reports, House of Lords.
L. R. C. P.	The Law Reports, Common Pleas.
L. T.	Law Times Reports.
L. T. (N. S.)	Law Times Reports, New Series.
Lev.	Levintz' Reports.
Macr. P. C.	Macrory's Patent Cases.
Mac. & G., or Mac. & Gord.	Macnaghten and Gordon's Reports.
Mer.	Merivale's Reports.
M. & G.	Manning and Grainger's Reports.
M. & W.	Meeson and Welsby's Reports.
Moo. P. C. C., or Moore P. C. C.	Moore's Privy Council Cases.
Moore P. C. C. (N. S.)	Moore's Privy Council Cases, New Series.
Myl. & Cr.	Mylne and Craig's Reports.
N. R.	The New Reports.
Russ.	Russell's Reports.
Seb. Dig.	Sebastian's Digest of Trade Mark Cases.
Sim.	Simon's Reports.
S. J.	Solicitors' Journal.
Stark.	Starkie's Reports.
T. R.	Term Reports.
T. M.	Trade Marks Journal (not the Official Journal of Trade Marks).
Vent.	Ventris' Reports.
Webs. P. R., or Webs. P. C.	Webster's Reports of Patent Cases.
W. R.	The Weekly Reporter.
W. N.	Weekly Notes.

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INTRODUCTION.

IN this chapter the system of arrangement adopted in the Patents, Designs, and Trade Marks Act, 1883, in the treatment of the subject has been followed :

I. PATENTS.

II. DESIGNS.

III. TRADE MARKS.

Under the head of patents it will be necessary to consider at greater length than perhaps is consistent with an introductory chapter what kind of inventions may be valid subject-matter of letters patent, and what is the consideration for which the privilege is granted to the inventor.

I. PATENTS.

A.

Substantially the law of patents is but little changed. The authors of the Act have repealed and consolidated into a single enactment the statutes relating to patents, with the exception of the unrepealed portions of the Statute of Monopolies. When this statute (21 James I. Ch. 3) was passed

Repeal of
statutes and
codification
of law.

it was declaratory of the common law, and since then the law of patents has been built up by judicial decisions in interpretation of its provisions. It will thus readily be seen that the codification above referred to relates to procedure and not to the principles of patent law.

Simplifica-
tion of
procedure.

A great change is effected by the simplification of the process for obtaining letters patent. Thus, under the repealed statutes, on an unopposed application with a provisional specification it was necessary for an intending patentee, or his agent, to apply personally at least seven times, and make four separate payments, using four documents for the application ; whereas now an applicant, or his agent, need only call at, or send by post to, the Patent Office twice—first, with the declaration and provisional specification, and afterwards with the complete specification. If the complete specification is lodged with the application, all the requirements can be complied with at one visit, or in one delivery if sent by post.

Payments.

The payments are also considerably reduced. A provisional protection for nine months can now be obtained for the small sum of one pound ; and for three pounds more the specification, is completed, and a patent granted on which no further payment is required for four years. The cost of obtaining a patent under the repealed Acts was £25, and the protection, unless further payments were made,

only extended for three years. The subsequent payments (a) remain unchanged in amount, but facilities are given to patentees to pay them by easy instalments if they prefer; and if by accident or mistake the prescribed fee be not paid within the prescribed time, the Comptroller-General of Patents is given power, on certain conditions, to enlarge the time for payment for a period not exceeding three months (b).

The *Administration of the Patent Office* is placed ^{Administration.} in the hands of the Comptroller-General of Patents, Designs, and Trade Marks, who is appointed by and acts under the direction of the Board of Trade, who are empowered from time to time to make such general rules (c) (subject to the approval of Parliament) and do such things as they may think expedient for carrying out the provisions of the Act (d).

Since the passing of the Patent Law Amendment ^{Commissioners of Patents.} Act, 1852 (e) the business relating to patents, before divided among several Government offices,

(a) See Patents Rules, first schedule, page 215.

(b) S. 17.

(c) The power has already been exercised by the repeal of the rules made under the authority of the commissioners, and the issuing of new rules for patents, designs, and trade marks, dated 21st December, 1883. See pp. 186, 241, 264.

(d) S. 101.

(e) 15 & 16 Vict. c. 83.

has been transacted under the direction of the Commissioners of Patents. The commissioners, who now as a body cease to exist, were the Lord Chancellor, the Master of the Rolls, and the Law Officers of the Crown. The jurisdiction of the Lord Chancellor to affix or refuse the seal, and to hear oppositions to the grant of letters patent, which was specially exempted from the Act constituting the Court of Appeal in Chancery (*f*) and continued by the Judicature Acts of 1873 and 1875, is not preserved by this Act.

Jurisdiction
of Lord
Chancellor.

Law
officers.

Examiners

The ultimate appeal on all questions relating to applications, provisional and complete specifications, and oppositions to the grant of letters patent, is now to the law officers of the Crown (*g*), who receive increased judicial functions, being empowered to examine witnesses on oath, to order the payment of costs, and to make rules regulating the practice and procedure on appeals before them (*h*). A staff of examiners of patents has been appointed, whose duty is to ascertain whether the nature of the invention has been fairly described, and the application, specification, and drawings (if any) have

(*f*) 14 & 15 Vict. c. 13, s. 83.

(*g*) Her Majesty's Attorney-General and Solicitor-General for England.

(*h*) See s. 38. This power has been exercised by the issue of rules and regulations embodied in those published by the Board of Trade. See p. 211.

been prepared in the prescribed manner, and to report thereon to the comptroller (i). This investigation does not extend to novelty or the subject-matter of the invention. The most difficult of these duties will be to ascertain "whether the nature of the invention has been fairly described." If the examiners perform their functions strictly, these words must very shortly be the subject of judicial decision.

Patents will be granted to other persons jointly with an inventor, but at least one of the applicants must sign a declaration that he is the first and true inventor (j); also to the personal representative of an inventor who dies without making an application for a patent for the invention (k). In future a patent will be granted for one invention only; but, as more than one claim is allowed, the practice and rules can alone determine what claims are subsidiary, and what contain too great an amount of invention to be incorporated in the same patent. However, if the patent is once granted, no objection on this ground can be made to the validity of the patent in actions for revocation and infringement.

By s. 36 it is enacted that a patentee may assign his patent for any place in or part of the United Kingdom or Isle of Man *as effectually as if the patent were originally granted to extend to that*

(i) See ss. 6, 7, 9, and notes.

(j) See s. 4.

(k) See s. 34.

place or part only. What rights the legal decisions in interpretation of this section may allow to the assignee in one district to prevent the use of the patented articles bought in another district remains to be seen. This question was discussed under the old law, for the first time, in the case of *Smith v. Buchanan*, 26 S. J. 347.

In this case the plaintiff had granted to certain parties a license to manufacture and sell his patented invention within the counties of Lancashire and Yorkshire. These licensees had sold the patented machines to the defendants, who, in their turn, had sold them outside the licensed counties, namely, in Glasgow and elsewhere. The plaintiff had commenced an action for infringement in respect of these sales, and now moved for an interim injunction. The case which he sought to establish was that the restriction imposed by the limited license attached to the patented machines in whatever hands they might be; and he founded this proposition upon the maxim that a vendor cannot give his vendee a better title or a greater right than he himself possesses in the subject-matter of the sale, and that in the case of a patent this maxim is absolutely unqualified, inasmuch as the doctrine of purchase for valuable consideration without notice cannot there be applied. However, Hall (V.-C.) refused the motion, with costs, upon the ground that a purchaser from a licensee, whether

special or general, acquires the patented articles for all purposes, and can exercise every right of ownership in respect of it.

The duration of the term of letters patent remains unaltered (*l*). Term of patent.

By s. 25 of the Patent Law Amendment Act, 1852 (*m*), it was enacted that letters patent obtained in the United Kingdom for patented foreign inventions were not to continue in force after the expiration of the foreign patent. The word "*grant*" in this section (quoted below) refers to the date of the letters patent, which is the date of application, and not the date of sealing (*n*). If the patent was French the English patent could not be held void until the annulment was pronounced by a French Lapse of British on expiry of foreign patent.

(*l*) See s. 17.

(*m*) 15 & 16 Vict. c. 83, s. 25: "Where upon any application made after the passing of this Act letters patent are granted in the United Kingdom for and in respect of any invention first invented in any foreign country or by the subject of any foreign power or state, and a patent or like privilege for the monopoly or exclusive use or exercise of such invention in any foreign country is there obtained before the *grant* of such letters patent in the United Kingdom, all rights and privileges under such letters patent shall (notwithstanding any term in such letters patent limited) cease and be void immediately upon the expiration or other determination of the term during which the patent or like privilege obtained in such foreign country shall continue in force . . ." (Repealed.)

(*n*) *Holste v. Robertson*, 4 Ch. D. 9; 15 & 16 Vict. c. 83, s. 24. (Repealed.)

court, until which the English patent remained in force (o). The provisions of this section are, however, not re-enacted, and in future no English patent can be rendered invalid by the expiry of a foreign patent bearing a prior date. It is, however, necessary to consider this provision; for there may be many presumably valid patents which have become invalid because of this section of the repealed law, and, if so, there is no provision in the new Act to enable them to be confirmed. For instance, the patent known as the Nordenfelt gun patent is now being attacked on this very ground. The date of the Belgian patent was the 12th of May, 1873; the date of the English patent the 13th of May, 1873; the date of annulment in Belgium the 17th of November, 1883. Unfortunately for the owners of the patent the proceedings in Belgium were not prolonged until the 1st January, 1884, when the annulment would have had no effect on the British patent (p).

(o) *Daw v. Eley*, L. R. 3 Eq. 497. In this case the motion was to commit the defendants, Messrs. Eley, for a breach of injunction, but on the expiry of the patent the motion was dismissed with costs.

(p) The cause of the annulment in Belgium was the failure of the patentee to work (*exploiter*) the invention in that country in accordance with the requirements of the Belgian patent law. It was necessary to obtain a royal decree of annulment. The proceedings to obtain the annulment are not similar to those required in France, where a decree of one of the Chambers of the Civil Tribunal is required, but consist of

Prolongations may be obtained, as heretofore, on petition to the Judicial Committee of the Privy Council (*q*), as provided by the 5 & 6 Will. IV. c. 83 (repealed); but the jurisdiction conferred upon that body to confirm letters patent by the same Act is not re-enacted. It is to be hoped that the powers given to the comptroller, as to amendment, &c., will be sufficiently large to supply this deficiency, and afford relief in all cases which bear hardly upon the patentee, and can be remedied without detriment to other persons. The existing procedure and practice are maintained; but Her Majesty in Council may from time to time make such amendments to the present rules and such new rules (*r*) as may from time to time be required.

Prolongation and confirmation of letters patent.

Many persons have expressed an opinion that the rules (*s*) and form (*t*) of application for patents for inventions communicated from abroad are *ultra vires*, on the ground that the required declaration :

Communications.

a petition to the Minister, accompanied by affidavits as to facts. Time was given to the patentees to furnish evidence of working, or reasons for not doing so. Their answer failed to satisfy the Minister, who would then, in the usual course, forward the petition to the King with his opinion that it should be granted. The decree of annulment was then published in the *Moniteur Officiel*, and the Belgian patent and all the rights existing thereby ceased.

(*q*) See s. 25.

(*r*) For rules and regulations of the Privy Council, see p. 185.

(*s*) Patents Rules, 27, p. 199.

(*t*) Patents Forms, A1, p. 221.

“ I do solemnly and sincerely declare that I am in possession of an invention for , which invention has been communicated to me from abroad by ; that I claim to be the first and true inventor thereof, &c.” contains a false statement, viz. that the applicant “ is the first and true inventor.” In support of this view a dictum of Vice-Chancellor Wood (Lord Hatherley), in the case of *Milligan v. Marsh* (u), is quoted. In this case an agent took out a patent for an invention communicated from abroad *in his own name*. The agent maintained it was his own invention, because the merit of the invention consisted in improvements he had made upon the communication, which, as it originally stood, was not subject-matter for letters patent. The learned judge intimated that, if this were true, the agent had a perfect right to the invention, but went on to say: “ The case made is, this was an invention of the plaintiff’s communicated to the defendant. *In such a case the letters patent, being taken out by*

(u) 2 Jurr. (N. S.) 1083, in the year 1856.

In the case of *Renard v. Levenstein* (10 L. T. (N. S.) 177) Lord Justice Knight Bruce expressed grave doubts as to whether “ it was not incumbent upon the patentee to distinguish, to define, and particularise what is new and what is old, which there is not done.” The context shows that the meaning of the term “ new ” was that part of the invention invented in this country after the communication, and of “ old ” that part of the invention which had been communicated.

the defendant as for an original invention, are void ab initio." It must, however, be remembered that these remarks were *obiter dicta*, and that in this case the application was not made as required by the Patent Office. *The grant of the patent was not asked for as a communication*, but as for an original invention. An applicant who uses the form of application before referred to will not come within the facts of this case, for he will have to sign an express statement that the invention has been communicated to him from abroad.

As to the alleged misrepresentation conveyed by the use of the words "first and true inventor" in the form of declaration required with the application for patent for an invention communicated from abroad, the reader is referred to the notes on "communications" (v) and on "importers" (w). From a reference to these notes it will readily be seen that "the first and true inventor" is a technical term, when used in connection with letters patent, equivalent, in these instances, to the words "first introducer" or "first importer" within this realm. This has been established by many legal decisions. These referred to, and no doubt resulted from, the general desire of the British public to become possessed of the knowledge of many manufactures, the secrets of which foreigners desired to keep for

(v) Note (b) to s. 4, p. 11.

(w) Note (c) to s. 5, s. 2, p. 15.

themselves (x). Anyone extracting the secret from them incurred great expense, and very often risk of personal injury, and therefore was considered to have been as much deserving of a patent for his importation as an inventor who had been fortunate enough to strike on an idea without much labour or expense.. That this is all the applicant is understood by the grantor (the Crown) to affirm is evident by the insertion in the form of the grant of letters patent—1st, a reference to the above declaration; 2nd, a proviso that if “*the said invention is not a new invention as to the public use and exercise thereof within the United Kingdom of Great Britain and Ireland and the Isle of Man, or that the said patentee is not the first and true inventor within*

(x) In discussing this matter in the case of *Marsden v. The Saville Street Company*, Sir George Jessel expressed the following opinion: “It is difficult to say, *à priori*, on what principle a person who did not invent anything, but who merely imported from abroad into this realm the invention of another, was treated by the judges as being the first and true inventor. I have never been able to discover the principle, and although I have often made inquiry of others, and of some who are more familiar with the patent law than even I am, although I cannot pretend not to possess a considerable familiarity with it, I could never get a satisfactory answer. The only answer was, it has been so decided, and you are bound by the decisions. But it is an anomaly, as far as I know, not depending on any principle whatever. It has never been declared by any judge or authority that there is such a principle, and, not being able to find one, all I can say is that I must look upon it as a sort of anomalous decision which has acquired by time and recognition the force of law.”

this realm as aforesaid, these, our letters patent, shall forthwith determine and be void to all intents and purposes, notwithstanding anything hereinbefore contained." It is therefore conceived that an attempt made to set aside the aforesaid form and the patents rule 27 as *ultra vires*, on the above-mentioned grounds, would be unsuccessful, and that those who have secured patents by communications from abroad need be in no fear as to the validity of their letters patent.

In addition to the before-mentioned changes in ^{Legal proceedings.} the legal proceedings before the law officers, some important changes are made in the trial of patents actions. The cumbrous procedure for the repeal of letters patent known as *scire facias*, so far as letters ^{Scire facias.} patent for inventions are concerned, is abolished, and the revocation of a patent may be obtained on petition to the court by such persons and in the mode prescribed by s. 26 (y).

(y) A reference to Hindmarch on Patent Privileges, chap. x. sec. 6, which exhaustively treats of *scire facias*, will show how very complicated the procedure was. The change is one of practice, and all the grounds on which a patent might have been attacked by this method are still available in an action for the revocation of a patent. The principle upon which the law is based is that the Crown, which acts in the public interest, grants protection on the *ex parte* statements of the inventor, and if it appear that the Crown has been deceived or its subjects prejudiced, it has a right to proceed by *scire facias* to cancel or revoke the letters patent. This is very clearly put by Coke in the fourth institute: "When the

Assessor. The court, in any action for infringement or revocation of a patent, or the Privy Council, on a petition for extension, may—and the former must—at the request of either party to the suit, call in the assistance of a specially qualified assessor at such remuneration as they may determine.

Jury. Patents actions have been mostly tried without the aid of a jury; but this is now made compulsory, unless the court expressly orders that it shall not be so (z).

King granteth anything that is grantable upon a false suggestion, the King by his prerogative, *jure regio*, may have a *scire facias* to repeal his own grant. When the King doth grant anything which by law he cannot grant by *jure regio*, for the advancement of justice and right, may have a *scire facias* to repeal his own letters patent."

The cases on which these propositions are founded are :

The King v. Butler, 3 Lev. 220, 221.

The Magdalene College Case, 11 Coke, R. 74.

Legatt's Case, 10 Coke, R. 113.

As to the position of the Crown when the grant is made on the passing of an Act of Parliament, see judgment of Eyre (L. C. J.) in *Boulton v. Bull*, 2 H. Bl. 500.

(z) See s. 28, sub. 1. The late Master of the Rolls, in the case of *Downes v. Hughes & Co. (Limited)*, when considering the advisability of trying a complicated patent case before a jury, said that this was an action which as an ordinary rule would be tried before a judge of the Chancery Division without a jury; but the plaintiff had, notwithstanding that he had marked it for his court, chosen to give notice of trial before a jury. The defendant said this was not a proper case for a trial before a jury, and he relied on several grounds. The first was, that the question of novelty, involving as it did

The particulars in which the trial of patents actions differs from ordinary actions are discussed under the sections of the Act which relate to legal proceedings and especially from ss. 26-33 (a).

the consideration of various previous patents, was not a fit one for a jury. As a general rule juries were not able to understand these questions properly, and in effect there was no fact in dispute, and the whole question was one of applied mechanics. In his opinion that issue was not a proper one for a jury. The second issue was also an extremely difficult one as to the sufficiency of the specification, and it was one which he did not consider a jury would be competent to deal with. Then the other issue, as to infringement, was also most complicated and difficult, having regard to the character of the two machines. This, no doubt, was in a sense an issue of fact, but it really would almost entirely depend on expert evidence, and was not an issue which a jury could satisfactorily deal with. In his opinion the action was one that ought clearly to be dealt with by a judge of the Chancery division, and he ought not to be afraid to say so. There was, moreover, this remark to be made, as to a trial at the assizes, there might not be sufficient time to try the case, and it might be made a remnant, or the judge might not think it a case fit for a jury, and might send it for trial to an official referee. Anything more unsatisfactory than either of the last events happening he could not conceive, and in mercy to the parties he thought the present order would be the best.— 24 S. J. 653.

(a) In the case of *Birch v. Mather*, 52 L. J. Ch. 292, it was held that ordinary rules of discovery apply to patents actions. Therefore, when in an action for the infringement of a patent the defendants had delivered particulars of objections, including a statement that the inventions claimed by the plaintiffs had, prior to the date of the letters patent, been used at places named, and the plaintiff desired to obtain

During an action for infringement a patentee may obtain liberty from the court to apply at the Patent Office for leave to amend his specification, and the court may decide that in the meantime the hearing of the action shall be postponed (*b*).

Savings for
Scotland,
Ireland, and
the Isle of
Man.

The Act contains special provisions and reservations as to legal proceedings in Scotland, Ireland, and the Isle of Man (*c*).

(B)—SUBJECT-MATTER OF LETTERS PATENT.

Property in
invention.

The right of property in movable chattels has been recognised by all nations in the earliest stages of their existence; but, although ancient nations, and more especially the Egyptians, frequently rewarded inventors, yet the right to the sole use of inventions was only conceded when considerable progress had been made in arts and manufacture, and, as far as one can judge, first of all to inventors in this country. It is true that many writers have maintained that the principles of what is termed universal equity entitle each inventor to an exclusive property in his particular invention. That the right of an inventor is not,

Reward of
invention.

the names and addresses of the persons using at those places the invention, it was held that the plaintiff was not bound to apply for further particulars, but could apply for leave to administer interrogatories.

(*b*) See s. 19.

(*c*) Ss. 107-112.

however, to be supported on this ground, but on that of public expediency, will appear from the following considerations: Any invention at first exists only as an idea in the mind of the inventor; but in a mere idea it is clear that, apart from the provisions of an express enactment, there can be no property, which can only arise when the idea has been converted into something tangible. When something tangible has been produced by the inventor he acquires property through the use of his invention, and he retains the exclusive power of augmenting this property, so long as no other person, by reason of independent invention or the disclosure of the secret, becomes possessed of the power of producing what is in effect identically the same property. As soon, however, as the invention is known to others the inventor loses this exclusive property in his invention, for, unless he is protected by the municipal law of the country in which he lives, nothing he has done gives him the right to hinder such persons as may please from making or using articles made according to his invention. The interest, therefore, of the inventor when not protected by the State is to keep his invention secret as long as possible. The adoption of a policy of secrecy has, however, not been found to be of much benefit to inventors, inasmuch as the precautions they are obliged to take in guarding against the disclosure of their inventions hampers their trade

On the
ground of
public
expediency.

and prevents them deriving an adequate reward for their expense and trouble. On the other hand, the public do not derive much advantage from the inventor's labour, for articles manufactured under these circumstances are necessarily costly, the supply limited, and very frequently the knowledge of the art and manufacture is altogether lost.

To remedy this state of things the State steps in and rewards the inventor in consideration of the disclosure of his invention to the public, by the grant of patent privileges for a limited period. This has been found to be the most convenient method of rewarding inventors, for their remuneration is in proportion to the benefit they confer upon the public, and only those in the State who use the invention have to contribute towards the payment of the reward (a).

Patents
granted by
Crown for
public good.

In accordance with this view the law of England never regards inventors as being as of right entitled to letters patent granting them the exclusive use of their inventions. Thus the inventor must petition the Crown, who, as the form of letters patent states, grants the request as a matter of grace and favour, for the encouragement of invention and for the public good (b). This power of granting patents therefore resides in the Crown alone, to be exercised only on

(a) 2 Bl. Com. cc. 1, 24—26. Hindmarch on Patents—Introduction.

(b) Form of patent, second and fourth recitals, p. 172.

behalf of (c), and for the benefit of (d), the public. Thus it cannot be conferred on a subject, and no private person can *create* (e) a legal monopoly (f).

It would appear that the common law, though it has always permitted limited monopolies in the shape of an exclusive right to use new inventions, declared almost every other kind of monopoly to be illegal; and the judges of the land did not scruple to repress grants of monopolies so declared illegal when made by the sovereign in defiance of the law. Nevertheless such grants were constantly made, nor did Parliament successfully dispute the Crown's prerogative till it grew seriously inconvenient, when at length, owing to its repeated encroachments—more especially in the reigns of Elizabeth and of James I.—the Statute of Monopolies was passed, in the 21st year of the latter reign, which finally checked these illegal grants (g).

Invention
protected by
common
law.

Statute of
Monopolies
declaratory
of common
law.

The legal monopolies, or sole rights of sale, which had always been allowed by the common law, were expressly excepted from the operation of the statute; and among these there were exempted,

(c) Per Lord Eldon in *Harmer v. Playne*, 14 Ves. 132.

(d) *Bac. Abr. Tit. Prerog.*, and see *Year Book*, 40 Edw. III. fol. 18.

(e) 3 *Shep. Abr. Prerog.* p. 57, s. 7, p. 54.

(f) *Hawk. P. Cr. Bk.* 1, c. 79.

(g) 21 James I. c. 3, s. 46, to this Act, p. 93; see *Macaulay's History of England*, iv. 127; *Hindmarch on Patents*, Ch. 1 & 2.

Section 6. by s. 6 (*h*) "*the sole working or making of any manner of new manufactures within this realm . . . which others at the time of making such letters patent shall not use. . . .*" Upon these words and the remainder of the section there have been numerous judicial decisions, and from these we derive our knowledge of what is proper subject-matter for valid letters patent. This subject-matter is termed "*an invention*," but the ordinary meaning attached to this word must be distinguished from its technical meaning. In the popular sense there are many ingenious schemes or ideas which are termed "*inventions*," but would not form valid subject-matter for letters patent, such as financial projects, methods of advertising not embracing mechanical inventions, and designs for ornamentation. When used in connection with letters patent the term "*invention*" ought to be understood only in its technical sense, as defined by this Act (*i*)—"any manner of new manufacture, the subject of letters patent and grants of privilege within s. 6 of the Statute of Monopolies." Thus, when an applicant makes the declaration required by the Act of 1883 (*j*), and affirms that he is in possession of "*an invention*," he must be supposed to mean that he is in the possession of a new manufacture within this realm of such a nature that he believes it to be valid

Subject-matter "*invention*."

Methods of advertising, etc.

Meaning of words in declaration "to be in possession of an invention."

(*h*) S. 6, given in full on p. 93.

(*i*) General definition, s. 46.

(*j*) S. 5, sub. 2.

subject-matter for letters patent according to the provisions of the above section (*k*), and the judicial decisions interpreting it.

An examination of these cases establishes the following conclusions: The "invention" must be a new and useful manufacture; the word "manufacture" meaning either the method of production or the article produced (*l*). Thus there can be no patent for a principle, for it is the result of *discovery*, not invention; and until the principle is applied there can be no *manufacture* (*m*). Letters patent can then be legally granted for the mode of carrying it into effect (*n*). Thus Watt's patent was not granted for the discovery of the principle that the condensation of steam in a vessel separate from the steam cylinder effected a saving of fuel, but for the mode of carrying this principle into practice, which, when effected,

New and
useful
manufac-
ture.

No patent
granted for
a principle.

But for
mode of
application.

Watt's
patent.

(*k*) For these provisions and comments of Sir Edward Coke respecting them, see p. 94.

(*l*) *Boulton v. Bull*, Watt's Patent, 2 H. Bl. 479.

(*m*) *Hornblower v. Boulton*, Dav. P. C. 221; *The King v. Wheeler*, 2 B. & Ald. 349; *Jupe v. Pratt*, 1 Webs. P. C. 145; *Neilson v. Harford*, 1 Webs. P. C. 295.

(*n*) *Househill Company v. Neilson*, 1 Webs. P. C. 552, 592; *Boulton v. Bull*, 2 H. Bl. 463; *Neilson v. Harford*, 1 Webs. P. C. 342, per B. Alderson; *Minter v. Wells*, 1 Webs. P. C. 134; *Newton v. Vaucher*, 21 L. J. Ex. 305; 6 Ex. 859; *The Electric Telegraph Company v. Brett*, 10 C. B. 838; *Hills v. The London Gas Light and Coke Company*, 5 H. & N. 369; *Bewley v. Handcock*, 6 De G. M. & G. 403.

produced the modern steam engine—a new manufacture. This was clearly expressed in the case of the “Otto” gas engine by Sir G. Jessel in the following words: “If you have a new principle or a new idea as regards any art or manufacture, and then show a mode of carrying that into practice, you may patent that, though you could not patent the idea alone; and very likely could not patent the machine alone, because the machine alone would not be new” (o).

Specifica-
tion for this
class of in-
vention.

In drawing a specification of this class of invention the best method is to state the principle, and then the manner of application. For instance, in Hill’s patent for the purification of gas, the principle that sulphuretted hydrogen was absorbed by hydrated oxides was stated, and then followed a description of the manner of effecting the purification of gas therefrom. The claim for the manufacture of gas in the manner described was therefore held good (p).

Processes.

In many of the early reports of cases on patents (q) there are expressions of opinion that a process might

(o) *Otto v. Linford*, 46 L. T. (N. S.) 35.

(p) *Hills v. The London Gas Light Company*, 5 H. & N. 369.

(q) *Boulton & Watt v. Bull*, 2 H. Bl. 463; *The King v. Wheeler*, 2 B. & Ald. 345; *Hall v. Jarvis*, 1 Webs. P. R. 100; *Hill v. Thompson*, 1 Webs. P. R. 237; *Morgan v. Seaward*, 2 M. & W. 544; *Gibson v. Brand*, 4 M. & G. 179.

be the subject of a patent privilege; but that this was so was not fully established till the case of *Crane v. Price* (*r*), which concerned a patent for a process of smelting iron by means of a hot-air blast. Chemical and mechanical. Processes are the result of the application of the sciences of mechanics and chemistry to the arts; but there can seldom be a purely chemical process, for chemical substances, in order to act on each other, must be brought into intimate relationship, and the difficulty of duly effecting this necessitates a large amount of mechanical invention. If by means of the process a new, better, or cheaper article is produced, it may be the subject-matter for valid letters patent (*s*). The patent may be for the article produced by the process if the article is not new, for a new method of producing an old article, as was decided in the case of *Stevens v. Keating*, is a *new manufacture* (*t*). Must be new, better, or cheaper. When letters patent have been obtained for a *new result*, and the patent describes a process of arriving at that result which is effectual at the date of the patent, the patentee is entitled to protection against all other processes; it is an infringement to adopt any other process for the purpose of arriving at that result (*u*). Process and new product.

(*r*) 4 M. & G. 580.

(*s*) *Gibson v. Brand*, 4 M. & G. 602, 1 Webs. P. R. 409; *Murray v. Clayton*, L. R. 7 Ch. 584.

(*t*) 2 Webs. P. R. 182; *Bush v. Fox*, Macr. P. C. 176; *Ralston v. Smith*, 11 H. L. C. 223.

(*u*) *Bädische Anilin Fabrik v. Levenstein*, 48 L.T.(N.S.) 822.

Omission of
part of pro-
cess.

Chemical
curiosity.

A patent for an invention which consists in the omission of part or parts of a process will be supported (*v*), and so will a process by which old materials can be used again (*w*), or which makes a chemical curiosity available for practical purposes (*z*).

Combinations.

Combina-
tions.

Must be a
substantial
improve-
ment.

The decisions as to patents for combinations are in effect similar, if not identical with those already stated as to processes. The combination must result in a substantial improvement, and be attended with results of novelty and utility to the public, by the adoption of new parts or new arrangements of the parts (*y*); and care must be taken only to claim the combination, unless a part or parts of the combination be novel, in which case a separate claim may be made (*z*). If three patents are taken

(*v*) *Minter v. Mower*, 6 A. & E. 1 Webs. P. R. 139; *Russell v. Cowley*, 1 Webs. P. R. 463; *Wellington v. Dale*, 7 Exch. 888.

(*w*) *Hills v. Liverpool Gas Company*, 9 Jur. (N. S.) 140; *Steiner v. Heald*, 6 Exch. 607.

(*x*) *Sellers v. Dickinson*, 5 Exch. 326; *Young v. Fernie*, 4 Giff. 597.

(*y*) *Lister v. Leather*, 8 E. & B. 1004; *Huddart v. Grimshaw*, Dav. P. C. 267; *Newall v. Elliot*, 10 Jur. (N. S.) 954; *Murray v. Clayton*, L. R. 7 Ch. 570; *Foxwell v. Bostock*, 12 W. R. 725; *Cannington v. Nuttall*, L. R. 5 H. L. 205; *Spencer v. Jack*, 3 De G. J. & S. 346; *Bovill v. Keyworth*, 7 E. & B. 725; *Cropper v. Smith*, W. N. 1883, p. 49.

(*z*) *Clark v. Adie*, 2 App. Cas. 321.

out for a combination, of which the third consists in merely such a combination of improvements introduced by the other two as any person of ordinary knowledge might effect without further experiment or further information than that contained in the prior specifications, the letters patent will be held void (a). But where a slight alteration turns that which was practically useless into a useful and important article of commerce, though the amount of the invention be small, yet, because of the greatness of the results, the patent will be supported (b).

Of course, if the improvement is on a valid Improvements on prior patents. existing patent, the patent for the improvement does not give the right to use the prior patent, the consent of the owner of which must be obtained until his term has expired (c). In *Parks v. Stevens*, James (V.-C.) sums up the law on this point when commenting on the case of *Lister v. Leather*: "The cases establish that a valid patent for an entire combination for a process gives protection to *each* part thereof that is new and material *for that process*; which is really nothing more than stating,

(a) *Saxby v. The Gloucester Waggon Company*, 7 Q. B. D. 305.

(b) *Hinks v. The Safety Lighting Company*, 4 Ch. D. 616.

(c) *Lister v. Leather*, 8 E. & B. 1017; *Saxby v. Clunes*, 43 L. J. Ex. 228; *White v. Fenn*, 15 W. R. 348; *Grant of Compulsory Licenses*, s. 22.

in other words, that you not only have no right to steal the whole, but you have no right to steal any part of another man's invention. And the question, in every case, is a question of fact—is it really and substantially a part of the invention?" (*d*).

Mechanical
and
chemical
equivalents.

Perhaps patents for combinations are more numerous, and the attempts to evade them more frequent, than any other description of patent taken out. The means of evasion usually employed are the substitution of what are termed mechanical or chemical equivalents in the place of a part or parts of the combination (*e*). Referring to one kind of evasion—that of colourable imitation—Lord Cairns, in the case of *Dudgeon v. Thomson* (*f*), says as follows: "That which is protected is that which is specified, and that which is held to be an infringement must be an infringement of that which is specified. But I agree that it will not be the less an infringement because it has been coloured or disguised by additions or subtractions, which additions or subtractions may exist and yet the thing pro-

Colourable
imitation.

(*d*) L. R. 8 Eq. 358; Affirmed on Appeal, 5 App. Cas. 36.

(*e*) *Stevens v. Keating* (Chemical Equivalent), 2 Webs. P. R. 181; *Russell v. Cowley* (Mechanical Equivalent), 1 Webs. P. C. 463; *Heath v. Unwin* (Chemical Equivalent), 5 H. L. C. 505, 543; *Muntz v. Foster* (Chemical Equivalent), 2 Webs. P. C. 96; *Hills v. The Liverpool Gas Company* (Chemical Equivalent), 9 Jur. (N. S.) 140; *Patent Type Founding Company v. Rich, Johns* 381; *Parks v. Stevens*, L. R. 8 Eq. 258.

(*f*) 3 App. Cas. p. 43.

tested by the specification be taken notwithstanding." "When the result is old, but the means new, the Court will look jealously at the claims of inventors seeking to limit the rights of the public at large for effecting that which has been commonly known to all the world long before" (g).

(C)—CONSIDERATION.

The subject-matter of the invention must be—

- (1) NOVEL.
- (2) USEFUL.
- (3) ADEQUATELY DESCRIBED.

Novelty.

The words of the statute of James, on which the ^{21 James I. c. 8, s. 6.} decisions as to novelty are based, are: "All letters patent and grants of privilege of the sole working or making of any manner of *new* manufactures within this realm . . . which *others, at the time of making such letters patent and grants, shall not use*" (h).

(g) Judgment of Lord Hatherley in *Curtis v. Platt*, 3 Ch. D. 135.

(h) See Introduction, p. xxi.; s. 46, p. 93. In the case of *Rolls v. Isaacs* it was held that the fact that an invention has been used in a British colony before the date of letters patent granted in respect of the invention for the United Kingdom does not invalidate the patent, 45 L. T. (N. S.) 704; *Brown v. Annandale* (distinguished), 8 Cl. & Fin. 437.

Prior user. Although the statute expressly mentions the word *others*, yet the decisions extend the fatal consequences of prior user to the *inventor himself*, on the ground that if the invention is already known the patentee has no further consideration to give the public. If the articles are sold (*i*), or even offered for sale by the patentee or others (*j*), this will constitute a prior user. Also the open use of the invention (*k*), though for private purposes (*l*), unless for the purpose of experiment, is a prior user (*m*). If, however, the inventor does not allow the public to use his invention, or himself use it in public, he may manufacture before the date of his patent without invalidating the same, provided such user does not result in profit to

Experiment.
When prior user allowed to inventor.

(*i*) Wood v. Zimmer, 1 Webs. P. R. 44; Losh v. Hague, 1 Webs. P. R. 205.

(*j*) Mullins v. Hart, 3 C. & K. 297; Oxley v. Holden, 8 C. B. (N. S.) 666.

(*k*) Betts v. Neilson, L. R. 3 Ch. 429; Heath v. Smith, 3 E. & B. 270.

(*l*) Stead v. Williams, 2 Webs. P. R. 130; Stead v. Andrews, 2 Webs. P. R. 149.

(*m*) Galloway v. Bleaden, 1 Webs. P. R. 529; Cornish v. Keene, 1 Webs. P. R. 501; Jones v. Pearce, 1 Webs. P. R. 122; Carpenter v. Smith, 1 Webs. P. R. 534; Hills v. Gas Light & Coke Company, 5 H. & N. 312.

If profit is made by the inventor during what are found to be merely experiments, this will not invalidate the patent; but good cause must be shown, such as the necessity of testing a marine cable by actually laying one. Newall v. Elliot, 4 C. B. (N. S.) 269.

himself till after the date of the patent (*n*). In these days of competition it would be advisable, in the public interest, to extend this doctrine, as is done in America. There are many inventions the value of which cannot be estimated till after some months' work on a manufacturing scale, and in such cases the inventor should be allowed to support letters patent obtained after such user for a limited period, provided that during that period none other than himself or his servants used the invention. Many inventors, through caution in thus testing their inventions, lose their reward; and if in this respect their position were altered, the public would be benefited by getting a more perfect description of the invention, and the entry of worthless patents on the register would be avoided. In this view there is nothing inconsistent with the statute of James. The manufacture is *new*, and *others* cannot rightly be said to use it, except where the patent is for an *article* which has been sold to or used by the public. This exception would not be very material in this case, for the necessity for a provision of this kind is most felt in connection with processes and combinations (*o*). A

(*n*) *Morgan v. Seaward*, 1 W. P. R. 194; *Bentley v. Flemming*, 1 C. & K. 587; re *Adamson's patent*, 6 De G. M. & G. 420. *Newall v. Elliot* shows when profit may be made during experiment, 4 C. B. (N. S.) 269. *Bramah v. Hardcastle*, 1 Webs. P. R. 44 note.

(*o*) In discussing this question Mr. Justice Erle said: "If

Secret
manufac-
ture.

secret manufacture and sale by *others* would not vitiate letters patent, why then should the secret use of the invention by a first and true inventor? Baron Parke answers this question by showing that if this were allowed the patentee would obtain a monopoly for more than fourteen years (*p*). This undesirable result might be prevented by deducting from the term of letters patent the limited period allowed for secret use, in testing an invention commercially.

Prior publi-
cation.
In books.

Prior publication, in printed books (*q*) or in specifications (*r*), for the same reasons as prior

one party only had used the process, and had brought out the article for profit, and kept the method entirely secret, I am not prepared to say that then the patent would have been invalid." *Heath v. Smith*, 2 E. & B. 256. Contra, see judgments of Buller (J.), in *Boulton v. Bull*, 2 H. B. 463-470, and *Dallas (J.)*, in *Hill v. Thompson*, 1 Webs. P. C. 244.

(*p*) *Morgan v. Seaward*, 2 M. & W. 544.

(*q*) *Rex v. Arkwright*, 1 Webs. P. R. 72; *Morgan v. Seaward*, 1 Webs. P. R. 140; *Cornish v. Keene*, 1 Webs. P. R. 507; *Walton v. Potter*, 1 Webs. P. R. 593; *The Household Company v. Neilson*, 1 Webs. P. R. 718 note; *Lang v. Gisborne*, 31 Beav. 133. Copies in the German language sent to the Patent Office and the library of the Institute of Civil Engineers, United Telephone Company v. Cox-Walker, 21 Ch. D. 720. Secus (when issue of book not sufficient for publication); *Stead v. Williams*, 2 Webs. P. R. 136; *Stead v. Anderson*, 2 Webs. P. R. 149; Book not entered in catalogue, *Plimpton v. Spiller*, 6 Ch. D. 425; *Heurteloup's Patent*, 1 Webs. P. R. 553. In fragments of books and annuals, *Heyden v. Neustadt*, 28 W. R. 496.

(*r*) As a general rule, *Huddart v. Grimshaw*, 1 Webs. P. R.

user, vitiates the grant of letters patent. If, however, an inventor files a specification and abandons it, but files another before the time allowed him for his provisional specification has elapsed, the first specification is not so published as to invalidate the second (s). The principle which has been laid down as to prior statements in books or specifications is thus stated by Lord Westbury: Rule as to when patent is invalidated. "That an antecedent specification ought not to be held to be an anticipation of a subsequent discovery unless you have ascertained that the antecedent specification discloses a practical mode of producing the result which is the effect of the subsequent discovery" (t), and "The antecedent statement must, in order to invalidate the subsequent patent, be such that a person of ordinary knowledge of the subject would at once perceive, and understand, and be able practically to apply the discovery without the necessity of making further experiments" (u).

86; *Hill v. Thompson*, 8 Taunt. 375, 1 Webs. P. R. 244; *Muntz v. Foster*, 2 Webs. P. R. 107. Even if difference in mode of working of invention is substantially the same, *Dobbs v. Penn*, 3 Exch. 427; *Hullett v. Hague*, 3 B. & Ad. 370. Specification does not differ from other publications, *Hill v. Evans*, 8 Jur. (N. S.) 529.

(s) *Young v. Fernie*, 4 Giff. 577; *Lewis v. Marling*, 10 B. & C. 22; 4 C. & P. 52; 1 Webs. P. R. 490; *Stoner v. Todd*, 4 Ch. D. 58; *Oxley v. Holden*, 8 C. B. (N. S.) 666.

(t) *Betts v. Menzies*, 10 H. L. C. 117.

(u) *Hills v. The London Gas Light Company*. "This seems

Utility.

A considera-
tion.

The invention must be useful, or again there will be a failure of consideration; for the patent is granted for the public benefit (*v*). There is no express proviso in the Statute of Monopolies that the manufacture must be useful; but that this was intended is evident from the frequent reference to the expediency of these grants throughout the statute. As has been before said, the statute of James was only declaratory of the common law, of which the necessity of the utility of the invention was an axiom (*w*). Sir E. Coke says: "In every such invention as deserves a privilege there must be *urgens necessitas* and *evidens utilitas*" (*x*).

Utility re-
quired.
A question
for jury.

The utility of an invention is a question for a jury (*y*), and the question to be considered is whether the invention is of some substantial use; and the patent will be invalid if the specification

a very sensible and reasonable rule," per Holker (L. J.), in *Otto v. Linford*, 46 L. T. (N. S.) 457.

(*v*) See Introduction, p. xxxvii.

(*w*) A patent is granted for the good of the realm in consideration of the good that he (the inventor) doth bring by his invention to the commonwealth; otherwise not. *Darcy v. Allein*, Noy. R. 182. *Edgebury v. Stevens*, 1 Webs. P. C. 35; *Shephard's Abridgments*, part iii. p. 61.

(*x*) 3 Just. 184.

(*y*) Or for the judge to estimate as if a jury, since patents actions are tried without a jury. *Lewis v. Davis*, 3 C. & P. 502; *Bloxam v. Elsee*, 1 C. & P. 565.

contains a false suggestion as to utility (*z*). The fact of an invention not being used is a presumption against its utility (*a*); but it is not necessary to prove that it has been useful. It is sufficient to show that the invention would be useful, and the evidence of experts on this point will be allowed (*b*).

Specification.

The third consideration for the grant of letters patent is that the patentee publishes a description of his invention in such a manner that he gives sufficient information to the public: Firstly, to enable them to understand fully what they are prevented from using during the period of his protection (*a*); and, secondly, to enable all the world to have the benefit and use of the invention as soon as the term of the grant is at an end (*b*). Yet the

Description
of invention
a considera-
tion for
letters
patent.

To whom
addressed.

(*z*) *Morgan v. Seaward*, 1 Webs. P. R. 172, 186; *Haworth v. Hardcastle*, 1 Bing. N. C. 182. Misrepresentation of utility avoids a patent, *Bloxam v. Elsee*, 6 B. & C. 178; *Turner v. Winter*, Dav. P. C. 145; *Losh v. Hague* (as to the meaning of "improvement"), 1 Webs. P. R. 202.

(*a*) *Morgan v. Seaward*, 1 Webs. P. R. 186.

(*b*) *Neilson v. Harford*, 1 Webs. P. R. 316.

(*a*) *Macfarlane v. Price*, 1 Stark. 199; *The King v. Arkwright*, Dav. P. C. 61; 1 Webs. P. C. 64, per Lord Eldon.

(*b*) *Newberry v. James*, 2 Mer. 446; *Liardet v. Johnson*, Bull N. P. 76, 1 Webs. P. R. 53; *The King v. Arkwright*, Dav. P. C. 106; *Morgan v. Seaward*, 1 Webs. P. R. 173; *Bovill v. Moore*, Dav. P. C. 361; *Galloway v. Bleaden*, 1 Webs. P. R. 524.

description need not be such as to enable unskilled persons to make articles by its aid; for to discard the use of technical terms for popular language would, instead of increasing the clearness, result in inconvenient length and ambiguity. The specification must then be of such a nature as to clearly disclose the invention to such persons of ordinary skill and ordinary knowledge as are engaged in the particular trade to which the invention relates, and to enable them, by bringing that skill and knowledge to bear upon the subject, to construct the machine or make the product by the means of the description given by the patentee (c); provided, however, that they need not have to resort to experiment or exercise their own inventive power (d). In the case of *Bädische Anilin Fabrik v. Levenstein*,

Must not
necessitate
experiment.

(c) *Morgan v. Seaward*, 1 Webs. P. R. 178; *Neilson v. Harford*, 1 Webs. P. R. 295-374; *Elliot v. Aston*, 1 Webs. P. R. 224; *Arkwright v. Nightingale*, Dav. P. C. 56; *Hornblower v. Boulton*, Dav. P. C. 228; *Huddart v. Grimshaw*, Dav. P. C. 279; *Harmer v. Playne*, Dav. P. C. 316; *Liardet v. Johnson*, Bull N. P. 76; *Bickford v. Skewes*, 1 Webs. P. R. 218; L. R. 1 Q. B. 938. What amount of skill and knowledge the persons to whom the specification is addressed are given credit for is very clearly pointed out in the judgment of Sir G. Jessel in *Plimpton v. Malcolmson*, 3 Ch. D. 568.

(d) *The King v. Arkwright*, Dav. P. C. 106; *Morgan v. Seaward*, 1 Webs. P. R. 173, 174; *Beard v. Egerton*, 19 L. J. C. P. 36; *Turner v. Winter*, Dav. P. C. 152; *Crompton v. Ibbotson, Dan, & Lloyd* 33 (where the patentee, knowing that only one material was suitable, said that he prefers that material, but that *any other suitable material might be used*).

Mr. Justice Pearson held that in considering the specification of such a patent as a complicated chemical compound, the standard of knowledge of the persons to whom it was addressed was that of such a chemist as would be in the usual course of events employed in that and similar works (e).

The patentee must not only particularly describe his invention, but he must state all he himself knows, or his specification will be bad and his patent invalid (f); and also, if it be materially false or defective the patent is against law and cannot be supported (g). When old and new matter is mixed up in the same specification, as, for instance, where the patent is for an improved process, or a new combination of old parts of a machine, the new must be distinguished from the old (h).

Must give complete information.

Must not be false or defective.

New matter must be distinguished from old.

By doing so he misled others into trying *experiments which he knew must fail*. See also *Stevens v. Keating*, 2 Ex. R. 772; *Simpson v. Holliday*, 13 W. R. 578; *Plimpton v. Malcolmson*, L. R. 3 Ch. D. 568.

(e) 48 L. T. (N. S.) 822; 24 Ch. D. 156 (not reported on this point).

(f) *Lewis v. Marling*, 4 C. & P. 52; 10 B. & C. 26; *Liardet v. Johnson*, 1 Webs. P. R. 53; *Bovill v. Moore*, 2 Coop. C. C. 56; *Hinks & Son v. Safety Lighting Company*, 4 Ch. D. 607.

(g) *The King v. Arkwright*, 1 Webs. P. R. 64; *Turner v. Winter*, 1 Webs. P. R. 77; *Crossley v. Potter*, Mac. P. C. 240; *Betts v. Neilson*, L. R. 3 Ch. 429.

(h) *Bovill v. Moore*, Dav. P. C. 404-413; *Parkes v. Stephens*, L. R. 8 Eq. 265; *Titley v. Castor*, Macr. P. C. 48; *Harrison v. The Anderston Foundry Company*, L. R. 1 App. Cas. 574; *Foxwell v. Bostock*, 4 De G. J. & S. 298; *Clark v. Adie*, L. R. 2 App. Cas. 328.

Construc-
tion of
specifica-
tion.

Many cases could be quoted to show that the specification will be construed by a court of law liberally and in favour of the inventor; but this is not necessary, for the form of letters patent for inventions ends with these words: "And, lastly, we do by these presents, for us, our heirs, and successors, grant unto the said patentee that these our letters patent shall be construed in the most beneficial sense for the advantage of the said patentee" (*i*).

Claims must be construed with reference to the whole context of the specification (*j*).

The construction of the specification, like that of all written documents, belongs to the court (*k*); but the jury have to decide whether the specification itself is intelligible (*l*) or not, and to interpret technical terms of art and phrases used in trade.

(*i*) The most recent of these cases are: *Plimpton v. Spiller*, 6 Ch. D. 412; *Otto v. Linford*, 46 L. T. (N. S.) 35; *Dudgeon v. Thomson*, L. R. 3 App. Cas. 34; *The United Telephone Company v. Harrison Cox-Walker & Company*, 21 Ch. D. 720; *Cropper v. Smith*, W. N. 1883, p. 49. As to construction of words, see *Bloxam v. Elsee*, 1 C. & P. 58, 568; *Derosne v. Fairie*, 2 C. M. & R. 476; *Neilson v. Harford*, 8 M. & W. 806; 1 Webs. P. R. 340, 363, 373; *Beard v. Egerton*, 19 L. J. C. P. 36; *Elliott v. Turner*, 2 C. B. 446; *Hills v. Evans*, 21 L. J. Ch. 457. See form of patent, first schedule to Act, form D.

(*j*) *Clark v. Adie*, L. R. 10 Ch. 667, L. R. 2 App. Cas. 315. For decisions and notes as to claims and title, see s. 5 and notes.

(*k*) *Hinks & Son v. Safety Lighting Company*, 4 Ch. D. 612; s. 5, sub. 5, p. 13.

(*l*) *Hills v. Evans*, 31 L. J. Ch. 457; 4 De G. F. & J. 288.

Drawings are subsidiary to the written part of the specification, but all that has been said as to the verbal description applies to the drawings. It is not sufficient to rely upon the drawing alone for the description, there must be some explanatory words in the specification (*m*).

II.—DESIGNS.

Under the repealed Acts relating to designs there was a double classification into ornamental and useful designs, and the designs coming under these heads were respectfully registered under separate Acts. Although the provisions of these Acts were very similar, much difficulty was frequently found in determining to which class a design belonged. This will no longer be experienced, inasmuch as by the present Act this distinction is abolished, and “any new and original design, not previously published in the United Kingdom,” may be registered as a design.* Where a useful design embraces a mechanical invention it then becomes proper subject-matter for letters patent; and as the fees for a patent are reduced from £25 for three years to £4 for four years (£10 being charged for the registration of a useful design under the repealed Acts), there will not be any

Abolition of
the distinction
between
ornamental
and useful.

(*m*) Neilson v. Harford, 1 Webs. P. C. 295.

* This was stated in the memorandum to the Bill on which the present Act is framed.

hardship (as there certainly would have been had the scale of fees previously existing at the Patent Office been maintained) in requiring an inventor of this class to seek protection under those provisions of the Act and rules which relate to letters patent. For this class of invention four years will in most cases be found a sufficient period of protection; and no doubt it may be found practicable for the Board of Trade, in the administration of the Patent Office, to exercise the power given them under the Act, and reduce the further payments required from the holders of such patents, who desire to prolong their term of protection.

Abolition of
provisional
registration.

The procedure of registration is much improved by the abolition of provisional registration, a protection seldom resorted to, and the simplification of the arrangements for the depositing of drawings and specimens. The term of copyright in a design under the repealed Acts varied according to the class under which it was registered, but henceforth a uniform term of five years from the date of registration has been fixed as the duration of the protection.

Sculpture.

The present Act does not provide for the registration of works of sculpture as designs.

Difference
between
proprietor
of a design
and a
patentee.

The original proprietor of a design differs from the original proprietor of a patent in that he need not be the inventor. It is sufficient if he acquires the design for a good and valuable consideration (b),

(b) S. 61.

whilst at least one of the applicants for a patent must be the true and first inventor of the subject-matter of the application.

Unless the design be registered when it is published the inventor has no power to prevent other persons using it; for his rights are created by statute, and protection is only given him on condition that the design is registered. When this is done he acquires the *copyright of his design*, which confers upon him the exclusive right to apply his design to any article of manufacture, or to any substance in the class or classes in which the design has been registered (c). Necessity of registration.

When the original proprietor of the design assigns the design, the assignees or licensees become equally proprietors with him (d). These latter, as well as the original proprietor, in their general interest, must take care that each article is marked with the prescribed mark (e), otherwise the copyright in the design shall cease, unless *all proper steps to insure the marking of the article* have been taken. Assignees become "proprietors." Marking. Whether the words in italics, which are inserted in the Act as a protection to the proprietor in case of accident, will allow more latitude with regard to the marking, remains to be seen. In the meantime,

(c) S. 60.

(d) Per Sir G. Jessel in *Jewitt v. Eckhardt*, 8 Ch. D. 404.

(e) S. 51, and notes.

proprietors should remember, that under the former Acts, the provisions as to marking were strictly enforced (*f*).

III.—TRADE MARKS.

Procedure
for obtain-
ing registra-
tion.

The remarks which have been made as to codification of the law and the simplification of the procedure with regard to patents and designs apply equally in the case of trade marks, especially as far as the rules issued in accordance with s. 101 are concerned. The forms in the second schedule to the Trade Marks Rules will be found materially to assist an applicant in fulfilling the various requirements expected of him before his mark can be registered, as well as the proprietor of a trade mark in the event of legal proceedings or the necessity of amendment. The provisions of the repealed Acts with regard to the registration of Sheffield Marks by the Company of Cutlers in Hallamshire have been amended, and it is expected that a great improvement will result by the harmonising of the methods employed for the registration of applications at Sheffield and London. The law itself is, however, very little altered, the only important change being that the definition of the trade mark is made by the wording of the present Act more extensive by the admission of (a.) a fancy word or words not in common use; (b.) brands;

Sheffield
marks.

Definition
of trade
mark.

(*f*) *Pierce v. Worth*, 18 L. T. (N. S. 710.

and (c.) single letters as old trade marks, to registration (a).

It will be observed that in the Act there is no penalty provided for the fraudulent imitation of a trade mark, or the selling of articles to which the same has been applied without the consent of the proprietor, as is the case with that portion of this Act which treats of designs. This, however, is amply provided for by the Merchandise Marks Act, 1862 (b), which is the only Act relating to trade marks which remains unrepealed. Among other provisions it makes misdemeanors several offences which may be classified as follows: (a.) Forging or counterfeiting any trade mark with intent to defraud; (b.) applying any trade mark to articles not of the manufacture of the person intended to be denoted by such trade mark; (c.) applying any trade mark by means of wrapper or otherwise, with intent to defraud, to articles not of the particular manufacture intended to be denoted by such trade mark (c).

Penalty for
fraudulent
imitation.

If a patentee endeavours to prolong his term of protection by means of a trade mark, he must not

Notes under
sections of
the Act re-
lating to
trade
marks.

(a) This is so stated in the memorandum to the Bill. See s. 64; *Ransome v. Graham* (exclusive use to combination of letters established), 51 L. J. Ch. 897.

(b) 25 & 26 Vict. c. 83.

(c) The fraudulent use of wrappers is described in s. 3 of the Merchandise Marks Act, 1862 (25 & 26 Vict. c. 88.)

register the word patent or any word importing that he is still in possession of letters patent, or the name of a new substance which he has invented (*d*). Under the various sections of the Act relating to trade marks explanatory notes have been inserted which, it is hoped, in connection with the index and cross references, will in most cases provide those who wish to register a mark with the required information, and point out to the proprietors of a mark the rights they have acquired, and the duties they must perform to retain those rights, either directly or by pointing out where the same may be obtained. Should this not be the case, reference should be made to Sebastian's Digest of Trade Mark Cases, which contains, in addition to English Cases, among which there are numerous decisions of the late Sir G. Jessel not elsewhere reported, numerous decisions of the American courts.

(*d*) Thus the word "Linoleum" was held after the expiration of the term of letters patent not to be a proper name for registration. 3 L. T. (N. S.) 448. See also *Ralph v. Taylor* (the lime-washer), 25 Ch. D. 194. See s. 73.

TABLE OF STEPS TO BE TAKEN IN ORDER TO
OBTAIN GRANT OF LETTERS PATENT.

In order to obtain the grant of letters patent, the applicant or his agent must comply with the following requirements:

(A)—WHEN THE COMPTROLLER IS SATISFIED WITH THE DOCUMENTS AND THERE IS NO OPPOSITION.

(1). An application (*a*) containing a declaration (*b*) must be left at or sent by post (*c*) to the Patent Office.

(2.) A provisional (*d*) or a complete (*e*) specification must be sent with the application.

(a.) If a complete specification be left, nothing further except (3) is required from the applicant, and a patent will be granted in due course (*f*).

(b.) If a provisional specification be left, within nine months from the filing, a complete specification must be left (*g*).

(*a*) S. 5, sub. 1, Patents Rules 7-21, forms A, A1.

(*b*) S. 5, sub. 2, Patents forms A, A1.

(*c*) S. 5, sub. 2.

(*d*) S. 5, subs. 2, 3, 5, 8, 14, Patents form B.

(*e*) S. 5, subs. 2, 4, 5, Patents form C.

(*f*) S. 15.

(*g*) S. 8.

(3). The following payments must be made (*h*):

(a.) If complete specification be left with the application	.	.	£4	0	0
(b.) If a provisional specification be left with the application	.	1	0	0	
And a complete specification is afterwards left	.	.	3	0	0
Total	.	£4	0	0	

(B)—WHEN THE COMPTROLLER IS NOT SATISFIED WITH
THE DOCUMENTS OR DRAWINGS.

(4.) In addition to steps (1), (2), and (3), amendments must be made as required by the comptroller, unless the decision of the comptroller be reversed on appeal to the law officers (*i*).

(C)—WHEN A NOTICE OF OPPOSITION TO THE GRANT OF
LETTERS PATENT IS LEFT AT THE PATENT OFFICE.

(5.) The applicant must comply with the regulations as to evidence and the hearing before the comptroller (*j*), and if the decision of the comptroller be appealed against, with those of the law officers (*k*).

If no opposition is lodged within two months of the acceptance of the complete specification, or in case of opposition, of the determination in favour of the grant of a patent, the patent shall be sealed with the seal of the Patent Office (*l*).

(*h*) First Schedule to Patents Rules.

(*i*) S. 7, sub. 1.

(*j*) S. 11, Patents Rules 32–41, Patents forms D, E.

(*k*) See rules and regulations issued by law officers, p. 211.

(*l*) Ss. 12, 13. Form of patent, p. 172.

PATENTS, DESIGNS, & TRADE MARKS ACT,

1883.

46 & 47 VICT. CH. 57.

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NOTE.

References to the rules are indicated by figures, and the explanatory notes and notes of decided cases by letters.

PATENTS, DESIGNS,
AND
TRADE MARKS ACT, 1883.

46 & 47 VICT. CH. 57.

CHAPTER 57.

*An Act to amend and consolidate the Law relating
to Patents for Inventions, Registration of
Designs, and of Trade Marks.*

A.D. 1883.

[25th August, 1883.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

Preliminary.

PART II.

PRELIMINARY.

1. This Act may be cited as the Patents, Designs, and Trade Marks Act, 1883.

Short title.

Division of
Act into
parts.

2. This Act is divided into parts, as follows :

Part I.—PRELIMINARY.

Part II.—PATENTS.

Part III.—DESIGNS.

Part IV.—TRADE MARKS.

Part V.—GENERAL.

Commence-
ment of Act.

3. This Act, except where it is otherwise expressed (a), shall commence from and immediately after the thirty-first day of December one thousand eight hundred and eighty-three.

(a) See provisions respecting existing patents, s. 45.

PART II.

PART II.

PATENTS.

PATENTS.

Application for and Grant of Patent.

Persons
entitled to
apply for
patent.

4. (1.) Any person (a), whether a British subject or not (b), may make an application for a patent.

(2.) Two or more (c) persons may make a joint application for a patent, and a patent may be granted to them jointly.

Personal
representa-
tives.
Public ser-
vants.

(a) A patent will be granted to the representatives of a deceased inventor. See s. 34.

A recent circular of the Post Office forbids its *employés* to take out patents without the consent of the Postmaster-General. A member of an official commission or committee cannot take out a patent in connection with the subject-matter of his official investigations if the invention has already been communicated to his colleagues, for from that time the invention was public property. *Patterson v. The Gas Light and Coke Co.*, 2 Ch. D. 812. In the House of Lords, on appeal, the view was taken that the plaintiff, being a

public servant (a gas referee), was bound to give the public the benefit of his information. L. R. 3 App. Cas. 239.

(b) Aliens, before the passing of this Act, have frequently Aliens. been the grantees of letters patent (*Chappell v. Purday*, 14 M. & W. 303), but it has been the usual practice for foreigners residing abroad to communicate their inventions Communi-
cations. to an agent in this country, who holds the patent on trust (*Beard v. Egerton*, 3 C. B. Rep. 97), and subsequently assigns the invention to his principal or his nominee. Thus letters patent have been granted to an alien resident abroad for an invention communicated to him by another alien, also resident abroad. In *re Wirth's patent*, 12 Ch. D. 303. It was supposed by some that, after the 1st January, 1884, these communications must cease,* inasmuch as when an invention is patented as an original invention, when in reality it is only a communication from abroad, the patent is void (*Milligan v. Marsh*, 12 Jur. (N. S.) 1083); and by s. 5, sub. 2, every application must contain a declaration that the applicant is in possession of an invention, whereof he, or in the case of a joint application one or more of the applicants, claims or claim to be the true and first inventor or inventors; and if such declaration is made out of the United Kingdom it must be made before a British consular officer, or a public officer duly authorised on that behalf. See first schedule to Act, form A, and note. The abolition of the system of granting letters patent on communications from abroad has been advocated for the purpose of remedying an evil which has very frequently occurred—viz., the obtaining of the grant of letters patent by fraudulently acquiring a knowledge of another's invention, and transmitting the information to some person resident abroad, who in turn instructs his agent in this country to apply for letters patent on his communication from abroad. The remedy proposed, however, is open to this objection, that the specification would in most instances have to be prepared by persons having a defective knowledge of English patent law,

* See Introduction, and note to "true and first inventor," note (c), page 15.

and might in consequence be invalidly drawn. There would also, in sending the papers to England to be prepared and returned for signature, as provided by first schedule, form A, be great danger of the invention becoming disclosed before the application; and the fear of this would operate as a deterrent from thus obtaining an opinion as to whether the invention is valid subject-matter for letters patent, and the specification properly drawn.

NOTE.—Since writing the above the Patents Rules have been published, of which rule 27 authorises applications for patents for inventions communicated from abroad, and a form (A1) for this purpose is set out in the second schedule thereto. But as a patent so obtained is distinctly a trust, which, by s. 85 cannot be registered, or notice thereof received by the comptroller, it is necessary for the inventor to be particular in selecting the person to whom he communicates his invention. See ss. 85 & 86, and notes.

Joint
application.

(c) S. 36 of 15 & 16 Vict. c. 83 gave power for more than twelve persons to have a legal interest in letters patent. It is not necessary that every applicant should be an inventor. See s. 5, sub. 2. When two or more persons jointly obtain letters patent, they are not partners, and any one of them may use the invention without the consent of, or being liable to account to, the others. *Mathers v. Green*, L. R. 1 Ch. 29; *In re Russell*, 2 De G. & J. 130.

After a patent has been taken out in the name of the inventor, and a partnership to work the invention has been formed, the patentee, who is also the registered owner, cannot hinder the other partners from working the invention. See *Kenny's Patent Button-holing Company v. Summerville & Lutwyche*, 38 L. T. Rep. (N. S.) 878.

Application
and specification.

5. (1.) An application (a) for a patent must be made in the form set forth in the first schedule to this Act,¹ or in such other form² as may be from time to time prescribed (b); and must be left at, or sent by post³ to (c), the patent office in the prescribed (b) manner.⁴

(2.) An application must contain a declaration (*a*) to the effect that the applicant is in possession of an invention, whereof he, or in the case of a joint application, one or more of the applicants (*d*), claims or claim to be the true and first inventor or inventors (*e*), and for which he or they desires or desire to obtain a patent; and must be accompanied by either a provisional or complete specification.⁵

(3.) A provisional specification (*f*) must describe the nature of the invention, and be accompanied by drawings (*g*), if required.⁶

(4.) A complete specification (*h*), whether left on application or subsequently, must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed, and must be accompanied by drawings (*g*), if required.⁶

(5.) A specification, whether provisional or complete, must commence with the title (*i*), and in the case of a complete specification must end with a distinct statement of the invention claimed (*j*).

¹ The forms A, B, and C in the first schedule to this Act have been altered or amended by the substitution therefor respectively of the forms A, A1, B, and C in the second schedule to the Patents Rules, 1883. See page 219; also rule 5.

² An application for a patent must be made either in the form A or A1 set forth in the second schedule to the rules. See page 219.

³ See rule 19. Applications sent by post shall, as far as practicable, be opened and numbered in the order in which the letters containing the same have been respectively delivered in the ordinary course of post. See rule 22.

⁴ Applications must be signed by the applicants. See rule 8.

As to size and form of documents, see rule 10.

Applications must be accompanied by an address, to which all notices, requisitions, and communications authorised or required by the Act may be sent. See rule 9.

⁵ For regulations as to affidavits and declarations, see rule 20; if made out of United Kingdom, see rule 21.

The form B in the second schedule to the rules is to be used if a provisional specification, and the form C if a complete specification, is sent.

⁶ For sizes and methods of preparing drawings accompanying provisional or complete specifications, see rules 28-30. Care must be taken not to fold the drawings, but to deliver them in a perfectly flat state, or rolled upon a roller so as to be free from creases or breaks, as the process used at the patent office for copying is that of photo-lithography.

Form of application.

(a) The form of application and declaration set forth in the first schedule of this Act would not be suitable in the case of a joint application where one (or more) of the parties was not an inventor, and it will be necessary for the Board of Trade to alter the form to suit any such applications. By the Patent Law Amendment Act, 1852, s. 54 (repealed), this duty was assigned to the Commissioners of Patents. For the power of Board of Trade to make alterations in forms of schedules, see s. 101, sub. 2.

(b) "Prescribed" means prescribed by any of the schedules to this Act, or by any general rules under or within the meaning of this Act. See s. 117.

Sending application by post.

(c) The sending of applications or specifications by post is one of the novel features introduced by this Act. It will be for the patentee to determine whether he will adopt the facilities given him for obtaining the grant of a patent privilege without the assistance of an experienced patent agent, bearing in mind that the validity of a patent will be much more frequently attacked than formerly, and proceedings taken for its revocation become common, owing to the abolition of the cumbrous mode of proceeding by

scire facias to repeal a patent. See s. 26. Documents sent through the post by a prepaid letter shall be deemed to have been left at the time when the letter containing the same would have been delivered in the ordinary course of post. S. 97, sub. 1.

(d) The words "or in case of a joint application one or more of the applicants" were not in the draft bill, but were added to give persons who, although not actually the inventors, have an interest in the patent, a share in the patent without the necessity of the inventor granting an assignment. This subsection will enable an inventor or capitalist more easily to make arrangements in the initial stages of the invention. Workmen ought, however, to remember that either of the joint owners of a patent has power to use the invention without the consent of the other, and to take steps to prevent such masters as would take advantage of the law in this respect, depriving them of their fair share of the benefit. *Mathers v. Green*, L. R. 1 Ch. 29.

Persons not
inventors
may apply
for patents
jointly with
inventors.

(e) An opinion has been expressed that by the operation of this and the former section "the importer of an invention from abroad cannot as heretofore obtain a patent" an "importer" not being a "true and first inventor" as required by s. 5, sub. 2. This may not, however, be the true interpretation of the Act, for in s. 46 "invention" is defined to be "any manner of new manufacture the subject of letters patent and grant of privilege within s. 6 of the Statute of Monopolies (21 James I., c. 3), and includes an *alleged* invention." And for the further and stronger reasons that the sixth section of the Statute of Monopolies is not repealed (see third schedule to Act, page 178, and note to s. 47); and that the form of patent contains this express condition. "Provided. . . that the said invention is not a new invention as to the public use and exercise thereof within our United Kingdom of Great Britain and Ireland, and Isle of Man, or that the said patentee is not the first and true inventor within this realm as aforesaid; these our letters patent shall forthwith determine and be void to all intents and purposes, notwithstanding anything hereinbefore contained. See first schedule to Act, form D, page 172. Before the passing of the

Importers.

Statute of Monopolies it was decided in the Case of Monopolies (*Darcy v. Allein*, Noy. 182) that the importer of an invention which has never been before used in this country had from the earliest times been considered an inventor and entitled to letters patent. In the Clothworkers of Ipswich Case it is laid down that the king may make a grant to whomsoever hath brought a new invention and a new trade within the Kingdom. Godbolt, 252 & 254. Following these cases the preamble of the Statute of Monopolies clearly pointed out that the grants intended to be rendered void were such only as would be void at common law independently of the statute; and the courts, in interpreting the 6th section of that statute, have held the importer of a foreign invention to be the true and first inventor "*within the realm*." Since the case of *Edgebury v. Stevens* (1 Webs. P. R. p. 35) this construction of the section has not been questioned, and as there appears to be nothing in the Act of 1883 to alter its meaning, an importer may support a patent for a foreign invention, and, until some other definition of "true and first inventor" be laid down by the courts, will continue to hold that privilege, except where international or colonial arrangements have been made as provided by ss. 103 & 104. It may here be noticed that among the grounds on which it is allowed to give notice of opposition to a patent there is the following: "That the invention has been patented *in this country* on an application of a prior date." See s. 11, sub. 1.

Provisional
specifica-
tions.

(f) A provisional specification is not a protection against infringement, but enables the inventor without detriment to use and publish the same.

In drawing provisional specifications it should be remembered that the examiner is required to compare it with the complete. See s. 9, sub. 1.

Drawings.

(g) Drawings have hitherto been frequently attached to specifications, and almost always in mechanical inventions, the specification of which in some instances has merely consisted of a drawing and its description; but the furnishing of drawings, if required, with the provisional specification is, for the first time, made compulsory. This may prove a

stumbling-block in the way of inventors who have not completed the details of their inventions. If the drawing is merely an illustration of one of many methods of carrying out the invention, it should be so stated in the specification.

(h) A complete specification, when filed, is a protection ^{Complete specification.} against infringement if a patent is granted. See s. 15. For form of complete specification, see first schedule to Act, form C. The express condition, that a complete specification must particularly describe and ascertain the nature of the invention, was formerly inserted in the body of the letters patent, but is now omitted. See form of patent.

The specification of a patent is bad if one of the materials to be used is described by a generic term comprising a variety of species, the majority of which would be unsuitable; and is also bad if a skilled mechanic would not, without performing a series of experiments, be able to construct the machine from the description. The generic term used in this case was "silica," the species was a particularly hard china, such as had hardly been made in Europe during this century. See *Wegmann v. Corcoran*, 13 Ch. D. 65.

When a patent is granted, not only in respect of a whole and complete thing described, but in respect also of a subordinate integer of that whole, the invention must be so described as to make it clear in respect of what (the whole or the integer) the patent has been asked for and granted. *Clark v. Adie*, 2 App. Cas. 315.

(i) As it is part of the duty of the examiners to see that ^{Title.} the title sufficiently indicates the nature of the invention, great care ought to be taken in the selection of a proper title. It should neither be too general nor too narrow. If it be too narrow and excludes any part of the invention as described in the specification, such part must not be claimed.

(j) Although not hitherto required by law it has been ^{Claims.} usual to conclude specifications by claims. Their real object was for the protection of the patentee by enabling him to point out that he did not claim as part of his invention matter which he had inserted in his specification

for the sake of giving a proper description of the invention. *Plimpton v. Spiller*, L. R. 6 Ch. D. 412, 426.

It will be seen by reference to the form of complete specification, first schedule to Act, form B, that a distinct statement of the invention claimed is required to be given by setting out the various parts of the invention in numerical order.

When a patentee, in his specification, proposes to do by machinery what has never before been done by machinery, and describes the machinery by which he does it, his claim is not too large on the face of it, because it claims generally to perform the operation by machinery. *Arnold v. Bradbury*, L. R. 6 Ch. 706.

In the case of *Cropper v. Smith*, W. N. 1883, p. 49, where two of the claims were bad or badly drawn, Mr. Justice Pearson held that the court was not bound to assume that the patentee meant to claim what would avoid his patent. The first claim was sufficient, and the others were superfluous, but did not make the patent invalid. This under sub. 5 of the above section must have been decided otherwise, as a *distinct* claim is now required.

Reference
of applica-
tion to ex-
aminer.

6. The comptroller shall refer every application to an examiner (*a*), who shall ascertain and report to the comptroller whether the nature of the invention has been fairly described, and the application (*b*), specification (*b*), and drawings (*b*) (if any) have been prepared in the prescribed manner,¹ and the title (*b*) sufficiently indicates the subject-matter of the invention.

¹ For size of documents, see rule 10.

For size and methods of preparing drawings, see rules 28-30.

(*a*) It was proposed in the draft bill to extend the duties of the examiners to ascertaining and reporting to the comptroller whether the invention was the subject-matter

for a patent, but by the Act his duties are confined to ascertaining and reporting whether

1. The title sufficiently indicates the subject-matter of the invention.
2. The documents and drawings (if any) are prepared in the prescribed manner.
3. The nature of the invention is sufficiently described in the specification.
4. When two specifications of patents not yet sealed are lodged bearing similar titles, whether the former comprises the latter. See s. 7, sub. 5.

This is a new feature in the procedure of obtaining letters patent. Formerly the application and provisional specification were referred to one of the law officers of the Crown, who had power to call in scientific aid at the expense of the applicant, and to require any title which in his opinion was too large or insufficient to be amended. This examination was, however, owing to the numerous demands on the time of the law officers, necessarily of a perfunctory nature, and it is anticipated that the examiners to be appointed under the new Act will subject the title and specification to a much more rigorous test. It would not, however, be advisable to rely on this examination, as no guarantee is given that the opinion of the examiner would be upheld in the event of litigation; and in the event of an amendment being required much delay would inevitably be caused to the applicant, as in the meantime the comptroller may refuse to proceed with the application. See s. 7, sub. 1. Should this system of examination be found to work well, it is possible that an extension might be made in the direction of an examination as to novelty and utility.

(b) See notes to s. 5.

7. (1.) If the examiner reports (a) that the nature of the invention is not fairly described, or that the application specification or drawings has not or have not been prepared in the prescribed

Power of
comptroller
to refuse
application
or require
amendment.

manner, or that the title does not sufficiently indicate the subject matter of the invention, the comptroller may require that the application specification or drawings be amended before he proceeds with the application (b).¹

(2.) Where the comptroller requires an amendment, the applicant may appeal from his decision to the law officer.²

(3.) The law officer (c) shall, if required, hear the applicant and the comptroller (d), and may make an order determining whether and subject to what conditions, if any, the application shall be accepted.

(4.) The comptroller shall, when an application has been accepted, give notice thereof to the applicant.

(5.) If after an application has been made, but before a patent has been sealed, an application is made, accompanied by a specification bearing the same or a similar title, it shall be the duty of the examiner to report to the comptroller whether the specification appears to him to comprise the same invention (e) ; and, if he reports in the affirmative, the comptroller shall give notice to the applicants that he has so reported.

(6.) Where the examiner reports in the affirmative, the comptroller may determine, subject to an appeal to the law officer,² whether the invention comprised in both applications is the same, and if so, he may refuse (f) to seal a patent on the application of the second applicant.³

¹ Before exercising a discretionary power given him by this Act the comptroller must give at least ten days' notice to the applicant of the time when he may be heard personally or by his agent by the comptroller. See rules 11-15, page 244. When before the comptroller all the evidence in the possession of either party should be given, as no further evidence is allowed on appeal to the law officers, save as to matters which have occurred or come to the knowledge of either party since the date of the decision appealed against, except by the leave of the law officer. See rule 8 of rules for regulating proceedings before law officers.

² For rules regulating the practice and procedure on appeals to the law officers, see page 211. For form of appeal, see second schedule to rules, form T, page 240.

³ Rule 16 permits rival applicants to attend the hearing of the question, whether the invention comprised in both applications is the same, but does not give liberty to either to inspect the specification of the other. See page 190.

(a) See ss. 5 & 6.

(b) Whether or no the concluding words of sub. 1 would give any chance to a subsequent application taking precedence of one requiring amendment has been the subject of discussion, but sub. 5 seems framed to include such an application; and as every patent shall be dated and sealed as of the day of application, and as the sealing of one patent shall not prevent the sealing of another patent for the same invention for which application for letters patent had been made earlier, it seems that the inventor whose title or specification is sent back for amendment will only suffer by the delay and the consequent shortening of the time during which he can use his patent privilege.

(c) Law officer means Her Majesty's Attorney-General Law officer. and Solicitor-General for England.

(d) That the comptroller should have to appear before the law officer to defend his decision seems open to objection.

(e) The comparison does not extend to prior *patents*, but only to *applications* for patents not yet sealed. See s. 6, note (a), page 19.

Appeal to
Lord Chan-
cellor abol-
ished.

(f) The jurisdiction of the Lord Chancellor at the last moment to refuse to affix the seal is not preserved by the new Act. Formerly an appeal was allowed in certain cases to the Lord Chancellor, but by the new Act no provision is made for appeal from the decisions of the Attorney-General and Solicitor-General for England. Formerly, where there were several applicants for letters patent for similar inventions, whoever first obtained the seal had priority, even if another had applied for the provisional protection before him, unless such applicant were proved to have fraudulently acquired the invention. It has not been unusual for two inventors to have applied for letters patent at almost the same time, and afterwards for both to receive the seal. This arose no doubt from an imperfect system of division of the applications between the law officers. See note (c) to s. 25.

Time for
leaving
complete
specifica-
tion.

8. (1.) If the applicant does not leave (a) a complete specification with his application, he may leave it at any subsequent time within nine months (b) from the date of application.

(2.) Unless a complete specification is left within that time¹ the application shall be deemed to be abandoned (c).

¹ Rules 46 & 47 authorise the comptroller to enlarge the time, if he think fit, for payments and acts done under the rules, but not for leaving specifications. See pp. 200, 201.

Complete
specifica-
tion.

(a) The deposit of a complete specification with the application will not enable an inventor to obtain priority over an earlier application for a like invention. See s. 7, sub. 5. As the complete specification must end with a distinct statement of the invention claimed (see s. 5, sub. 5), it is not advisable, except under special circumstances, to leave this with the application, but to take time well to consider the claims, and carefully inquire as to the novelty of each separate part of the invention.

(b) Under the 15 & 16 Vict. c. 83, unless the complete specification were left with the petition and declaration, there was an express condition inserted in the letters patent that the patentee should, *within six months from the date of the letters patent*, particularly describe and ascertain the nature of the invention; this specification, except when filed with the application in lieu of a provisional, was not subjected to any kind of examination.

(c) As it has been decided that the abandonment of a provisional specification before the time for filing a complete ^{Abandonment.} is not a publication, it seems an inventor may file a new specification, and proceed to obtain valid letters patent, provided that the application is made before the nine months from the filing of the former specification have expired. *Oxley v. Holden*, 8 C. B. (N. S.) 666. See s. 10 as to publication.

9. (1.) Where a complete specification (a) is ^{Comparison of provisional and complete specifications.} left after a provisional specification, the comptroller shall refer both specifications to an examiner for the purpose of ascertaining whether the complete specification has been prepared in the prescribed manner (b), and whether the invention particularly described in the complete specification is substantially the same (c) as that which is described in the provisional specification.¹

(2.) If the examiner reports that the conditions hereinbefore contained have not been complied with, the comptroller may refuse to accept the complete specification unless and until the same shall have been amended to his satisfaction;² but any such refusal shall be subject to appeal to the law officer (d).

(3.) The law officer (d) shall, if required, hear³ the applicant and the comptroller, and may make

an order determining whether and subject to what conditions (if any) the complete specification shall be accepted.

(4.) Unless a complete specification is accepted within twelve months from the date of application, then (save in the case of an appeal having been lodged against the refusal to accept) the application shall, at the expiration of those twelve months, become void (e).

(5.) Reports of examiners shall not in any case be published or be open to public inspection, and shall not be liable to production or inspection in any legal proceeding, other than an appeal to the law officer under this Act, unless the Court or officer having power to order discovery in such legal proceeding shall certify that such production or inspection is desirable in the interests of justice, and ought to be allowed.

¹ For provision as to form of documents, see rule 10; as to drawings, see rules 28, 29, and 30. For form of complete specification, see form O, second schedule to rules, page 223.

² As to exercise of discretionary power by the comptroller, and hearing of applicant, see rules 11-15.

³ See rules regulating the practice and procedure on appeals to the law officers, page 211.

For form of appeal to the law officer, see form T, second schedule to the rules, page 240.

(a) For time of leaving complete specification, see s. 8.

Prescribed
manner.

(b) Under the Act of 1852, unless filed with the application in lieu of a provisional, a complete specification was

not subjected to any "examination." See s. 5, sub. 5; first schedule, form C, page 171.

Drawings must be annexed to *both provisional and complete specifications, if required*. See s. 5, subs. 3 & 4.

(c) No examination of the provisional and complete specifications with a view to comparing discrepancies between them has hitherto taken place, and it is uncertain at present how this provision will affect the patentee. On the one hand, it may save a patent; on the other hand, valid claims may sometimes be struck out, to the detriment of the patentee, which, under the old system, he might have retained at his own risk.

Comparison
of provi-
sional and
complete
specifica-
tions.

Patentees must therefore carefully consider their provisional specification with a view to making the complete "substantially the same." The statute of 1852 (15 & 16 Vict. c. 83, s. 6) only required that in the provisional specification "*the nature of the invention*" should be described, while it defines the complete specification to be "an instrument particularly describing and ascertaining the nature of the invention, and in what manner the same is to be performed (15 & 16 Vict. c. 83, s. 9), the only examination provided by that statute being that the law officer, "in case the title or the provisional specification be too large or insufficient," might require the same to be amended (15 & 16 Vict. c. 83, ss. 7 & 8). It will thus be seen that there is a wide verbal difference between the Acts of 1852 and of 1883, but it is not anticipated the examiner will require a greater degree of similarity between the two specifications than under the Act of 1852 was necessary to support valid letters patent. A provisional specification, if allowed by the law officer of the Crown, cannot be impeached as being too general. The complete specification must not claim anything different from that which is included in the provisional specification, but need not extend to everything so included. *Penn v. Bibby*, L. R. 2 Ch. 127. See also *Thomas v. Welch*, L. R. 1 C. P. 192; *Bailey v. Robertson*, 3 App. Cas. 1055. In the latter case, the complete specification including more than the provisional, the patent was held invalid.

The late Master of the Rolls pointed out that a provisional specification was never intended to be more than a mode of protecting an inventor until the time for filing the final specification. It was not intended to contain a complete description of the thing, so as to enable any workman of ordinary skill to make it, but only to disclose the invention fairly no doubt, but in its rough state, until the inventor could perfect its details. *Stoner v. Todd*, 4 Ch. D. 58.

Telephone
case.

Inventors must, therefore, well consider whether the improvements which they have made in their invention between the filing of the provisional and the complete specification have been foreshadowed in the provisional specification, and can fairly be included in the same patent, bearing in mind that by the new Act each separate invention requires a separate patent. See s. 33. In the telephone case, Mr. Justice Fry says: "If something were found out during the six months" (now nine months) "to make the invention work better or with respect to the mode in which the operation may be performed, a thing which is very likely to happen when in carrying out his invention the inventor finds that some particular bit will not work so smoothly as he expected, and it is necessary to add a little supplement to it—still the nature of his invention remains the same, and it is no objection that in the complete specification, which comes afterwards, the invention is described more particularly and in more detail,—or even if it be shown that there is more discovery made, and so as to make the invention which he has described really workable. If nothing more than this is done I think it is good; but as soon as it comes to be more than that, and the patentee says in the provisional specification, 'I describe my invention as A,' and in the complete specification, 'I describe my invention as A and also B,' then as regards B it is void, because letters patent were granted for the invention that was described in the provisional specification, and do not cover the invention that is described in the other." *United Telephone Co. v. Harrison, Cox-Walker & Co.*, 21 Ch. D. p. 744.

(d) The provisions as to appeal, etc., are the same as those under s. 7. See page 211. Appeal to law officer.

(e) The provision in sub. 4 with regard to the length of time allowed between the filing of application and the acceptance of the complete specification will in some cases, it seems, bear hardly upon foreign and colonial inventors. Foreign and colonial applicants. In discussing this difficulty Messrs. Haseltine, Lake, & Co. (solicitors of patents) write as follows: "Provided the demand for amendment be made very soon after the deposit of the specification, this period will undoubtedly be sufficient if the applicant resides in the United Kingdom or upon the continent of Europe, and it may be sufficient even if he resides in America; but a question arises as to what is to happen in a case where the complete specification has not been filed until nine months after the date of the application, if the applicant resides in Australia, India, or some other remote place."

10. On the acceptance of the complete specification (a) the comptroller shall advertise the acceptance (b); and the application and specification or specifications with the drawings (if any) shall be open to public inspection (c).¹ Advertisement on acceptance of complete specification.

¹ See rules 25 & 26.

(a) The complete specification must be lodged within nine months from the date of application (s. 8, sub. 1), and accepted within twelve months, except when under appeal (s. 9, sub. 4). Complete specification.

(b) When the complete specification has been accepted, it is too late to abandon it and apply for a patent for the same subject-matter. See s. 8, sub. 2, note (c.), page 23.

An illustrated journal of patented inventions will be issued periodically, in which the acceptance will be advertised. See rule 25.

(c) Public inspection may be had in London at the Patent Office, Southampton Buildings, Chancery Lane, Public inspection.

and at the Patent Museum, South Kensington; in Scotland, at the Museum of Science and Art; in Ireland, at the Enrolments' Office of the Chancery Division; in the Isle of Man, at the Rolls' Office. The opening of the drawings and specifications to public inspection before the grant of the patent, and before the time for opposition, affords facilities for fraudulent oppositions.

Opposition
to grant of
patent.

11. (1.) Any person may, at any time (a) within two months from the date of the advertisement (b) of the acceptance of a complete specification, give notice at the patent office of opposition¹ to the grant of the patent on the ground (c) of the applicant having obtained the invention from him or from a person of whom he is the legal representative; or on the ground that the invention has been patented in this country on an application of prior date (g); or on the ground of an examiner having reported to the comptroller that the specification appears to him to comprise the same invention as is comprised in a specification bearing the same or a similar title and accompanying a previous application;² but on no other ground (d).

(2.) Where such notice is given the comptroller shall give notice of the opposition to the applicant,³ and shall, on the expiration of those two months, after hearing the applicant and the person so giving notice (e), if desirous of being heard, decide on the case,⁴ but subject to appeal to the law officer.⁵

(3.) The law officer shall, if required, hear the applicant, and any person so giving notice and being, in the opinion of the law officer, entitled

to be heard in opposition to the grant, and shall determine whether the grant ought or ought not to be made.⁶

(4.) The law officer may, if he thinks fit, obtain the assistance of an expert, who shall be paid such remuneration as the law officer, with the consent of the Treasury, shall appoint (f).

¹ For form of opposition see second schedule to rules, form D, page 224. Notice must state grounds. See rules 32 & 40, pp. 197-199.

² Particulars of prior patent must be given as specified in rule 34.

³ Opponent must leave statutory declarations in favour of his opposition, and deliver to applicant a list thereof. See rules 35 & 37. Applicant must leave statutory declarations in reply. See rules 36 & 37.

⁴ On the completion of the evidence the comptroller shall appoint a time for the hearing of the case, and shall give the parties seven days' notice of the appointment. See rule 39.

⁵ For notice of appeal to law officer, see second schedule to rules, form T, page 240.

⁶ For rules regulating the practice and procedure on appeals to the law officers, see page 211.

(a) Oppositions to the grant of letters patent were formally heard at two periods : (1) Before the Attorney or Solicitor-General, during the twenty-one days after the notice of intention to proceed had been published in the *London Gazette*. (2) Before the Lord Chancellor, during the interval between the issue of the warrant and the sealing of the patent. Oppositions under the Patent Law Amendment Act of 1852.

(b) The decisions of the law officers were not reported, and in some instances were found to be in direct conflict.

(c) As there was no right upon the part of those opposing Grounds of opposition.

to see the provisional specification of the applicant, oppositions were often entered merely on suspicion. See note (c) to last section. The grounds upon which oppositions have mostly been successful are: (1) When the invention has been obtained by fraud. (2) When previous public use has been proved.

By this section of the new Act a great change will be made, opposition being allowed on the ground: (1) That the invention has been obtained from the person opposing. (2) That a prior patent has been granted for the invention. (3) That the examiner has reported to the comptroller that the specification appears to him to comprise the same invention as is comprised in a specification bearing the same or a similar title and accompanying a previous application.

(d) This last ground is not clearly worded. It evidently does not refer to *any* previous application and specification, but merely such as are then in the patent office and not yet sealed, as stated in s. 7, sub. 5.

Specifi-
cation open to
opposer.

(e) An opposer will now have the advantage of seeing the applicant's specification (see s. 10), and it is therefore certain that many more oppositions will be lodged. If the examination is strict, patents which have gone through this ordeal will have more value than otherwise.

Poor inven-
tion.

(f) It is suggested that this section may often prove a hardship for a poor inventor, in consequence of the expense which in most cases would be required for models, attendance of experts, &c.

Cases of
opposition.

(g) The prior publication must be of such precise information as is required in a specification (*Von Heyden v. Neustadt*, 28 W. R. 496). Where a servant filed a provisional specification for an invention, after which the master filed a provisional specification for a similar invention, and subsequently filed a complete specification and obtained letters patent, and there was a suspicion of *mala fides* on the side of the master, it was held that the Great Seal should be fixed to the servant's patent, and that it should bear the date of the provisional specification. *Ex parte Scott & Young*, L. R. 6 Ch. 274. For other cases of rival applicants,

see *In re Harrison*, L. R. 9 Ch. 631; *Bates & Redgate*, L. R. 4 Ch. 577; *Ex parte Bailey*, L. R. 8 Ch. 60; *Ex parte Manceau*, L. R. 5 Ch. 518; *In re Dering*, L. R. 13 Ch. D. 393; *Ex parte Yates*, L. R. 5 Ch. 1; *In re Gething*, 9 Ch. 633.

12. (1.) If there is no opposition, or, in case of ^{Sealing of patent.} opposition, if the determination is in favour of the grant of a patent, the comptroller shall cause a patent to be sealed with the seal of the patent office (a).

(2.) A patent so sealed shall have the same effect as if it were sealed with the Great Seal of the United Kingdom.

(3.) A patent (b) shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of application, except in the cases herein-after mentioned, that is to say:

(a.) Where the sealing is delayed by an appeal (c) to the law officer, or by opposition (d) to the grant of the patent, the patent may be sealed at such time as the law officer may direct.

(b.) If the person making the application die before the expiration of the fifteen months aforesaid, the patent may be granted to his legal representative, and sealed at any time within twelve months after the death of the applicant (e).

(a) There will be a new seal for the patent office. See Seal.
s. 34.

- Form. (b) For form of patent, see first schedule to Act, form D.
 (c) See s. 9.
 (d), See s. 11.
- Death of inventor. (e) If an inventor dies without making an application for letters patent for his invention, the application may be made by his personal representative, provided the application is made within six months of the decease of the inventor.

Date of patent. 13. Every patent shall be dated and sealed as of the day of the application (a): Provided that no proceedings shall be take in respect of an infringement committed before the publication of the complete specification (b): Provided also, that in case of more than one application for a patent for the same invention, the sealing of a patent on one of those applications shall not prevent the sealing of a patent on an earlier application (c).

Sealing of patent. (a) By the 15 & 16 Vict. c. 83, s. 23, it was provided that, "it shall be lawful" to cause any letters patent to be issued in pursuance of this Act to be sealed and bear date as of the day of application for the same." And in many cases patents have been dated on the day of the sealing of the same or between the date of application for a provisional protection and the sealing. By this section, however, every patent must be sealed as of the day of application with the provisoes:

Proceedings for infringement. (b) (1) That no proceedings for infringement shall be taken till the complete specification is published. This happens on the acceptance of the complete specification (see s. 10), while under the Act of 1854 (s. 9), if no provisional specification were filed, proceedings might be commenced as from the date of the filing a complete specification according to the

conditions therein laid down; if, however, a provisional specification were filed, not until the granting of the letters patent. As no proceedings can be taken against infringers who have used the invention before the *acceptance* of the complete specification, inventors will do well to see that their specifications are well prepared and require no amendment, and to take as small a portion of the nine months allowed to consider their complete specification as is consistent with accuracy of description.

(c) (2) That in the case of more than one application for the same invention, the sealing of a later application shall not prevent the sealing of an earlier.

Sealing of
patents on
rival appli-
cations.

This is to prevent what has been called "racing for the seal." It frequently happened that the law officers allowed applications for the same or similar inventions for provisional protection, and that the latter applicants, by being more expeditious in the filing of their complete specification, first obtained the seal. In the case of *Bates v. Redgate*, L. R. 4 Ch. 577, Lord Hatherley held that the person who first obtains the patent, although he be not the first applicant, is the holder of valid letters patent, and that a second patent could not be granted to the first applicant, for any part of his invention which is covered by the letters patent already obtained by the second applicant. Lord Cairns refused to follow this decision in the case of *In re Dering's Patent*, 13 Ch. D. 397, on the ground that "Parliament intended the six months to be for the completion of the invention and for protecting the specification, and never said that the applicant should be deprived of or lose that advantage by want of any due diligence on his part." See *In re Johnson's Patent*, 13 Ch. D. 398, and *Ex parte Henry*, L. R. 8 Ch. 167; *In re Harrison*, L. R. 9 Ch. 631.

"Racing for
the seal."

Provisional Protection.

14. Where an application for a patent in respect of an invention has been accepted, the invention

Provisional
protection.

may, during the period between the date of the application and the date of sealing such patent, be used and published without prejudice to the patent to be granted for the same; and such protection from the consequences of use and publication is in this Act referred to as provisional protection (a).

Object of
provisional
specifica-
tion.

(a) S. 13 states in effect that a provisional protection is no protection against infringement. The object of this section (s. 14) is to allow of the inventor conducting his experiments without risk of his patent being refused because of any publication or user by himself or others during the period between the date of application and the date of sealing.

Protection by Complete Specification.

Effect of
acceptance
of complete
specifica-
tion.

15. After the acceptance of a complete specification and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the *acceptance* of the complete specification: Provided that an applicant shall not be entitled to institute any proceeding for infringement unless and until a patent for the invention has been granted to him.

Liability for
infringe-
ment.

Under the Act of 1852, when a complete specification was filed with the application, infringers were liable from the date of the filing. It must be noted that by this section the liability of infringers commences only with the

acceptance of the complete specification, and that no action can be commenced against them until the patent has been sealed. The words "or the expiration of the time for sealing" are useless, because of the proviso.

Patent.

16. Every patent when sealed shall have effect ^{Extent of patent.} throughout the United Kingdom and the Isle of Man.

Letters patent were valid under the 15 & 16 Vict. c. 83, ^{Channel Isles.} for the United Kingdom, the Channel Isles, and the Isle of Man. The Channel Isles are not mentioned in this Act, and patentees may find that this omission may increase the risk of infringement of their patents.

17. (1.) The term limited in every patent for the ^{Term of patent.} duration thereof shall be fourteen years from its date (a).

(2.) But every patent shall, notwithstanding anything therein or in this Act, cease if the patentee fails to make the prescribed payments within the prescribed times (b).

(3.) If, nevertheless, in any case, by accident, mistake, or inadvertence, a patentee fails to make any prescribed payment within the prescribed time, he may apply to the comptroller for an enlargement of the time for making that payment.¹

(4.) Thereupon the comptroller shall, if satisfied that the failure has arisen from any of the above-mentioned causes, on receipt of the prescribed fee for enlargement,² not exceeding ten pounds, enlarge

the time (c) accordingly, subject to the following conditions :

- (a.) The time for making any payment shall not in any case be enlarged for more than three months.
- (b.) If any proceeding shall be taken in respect of an infringement of the patent committed after a failure to make any payment within the prescribed time, and before the enlargement thereof, the Court before which the proceeding is proposed to be taken may, if it shall think fit, refuse to award or give any damages in respect of such infringement.

¹ For rule as to application for enlargement of time for payment, see rule 46, page 200, and for form of same, see second schedule, form K, page 232.

² These fees are, if not exceeding one month, three pounds; not exceeding two months, seven pounds; not exceeding three months, ten pounds. See first schedule to rules.

(a) The date of a patent is the date of the application for the same. In the case of *Russell v. Ledsam* (14 M. & W. 647) it was held that when original letters patent were dated on the 26th February, 1825, and renewed letters patent were dated on the 26th February, 1839, the day of the date must be reckoned inclusively, and that the former term expired on the 25th February, 1839. There is no change in the duration of a patent made by the new Act.

(b) See the second schedule to this Act, and first schedule to the rules and regulations, page 215. The Board of Trade, with the sanction of the Treasury, have power to prescribe other fees for matters not mentioned in the schedule, and to reduce the fees mentioned in the schedule.

(c) The enlargement of the time for payment of the fees for a period not exceeding three months under the above conditions is entirely a new feature in patent procedure.

Amendment of Specification.

18. (1.) An applicant or a patentee (*d*) may, from time to time, by request in writing left at the Patent Office, seek leave to amend his specification (*a*), including drawings forming part thereof, by way of disclaimer (*e*), correction, or explanation, stating the nature of such amendment and his reasons (*b*) for the same.¹

(2.) The request and the nature (*c*) of such proposed amendment shall be advertised in the prescribed manner,² and at any time within one month from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.³

(3.) Where such notice is given the comptroller shall give notice of the opposition to the person making the request,⁴ and shall hear and decide the case subject to an appeal to the law officer.⁵

(4.) The law officer shall, if required, hear the person making the request and the person so giving notice,⁶ and being in the opinion of the law officer entitled to be heard in opposition to the request, and shall determine whether and subject to what conditions (if any) the amendment ought to be allowed (*f*).

(5.) Where no notice of opposition is given, or the person so giving notice does not appear, the comptroller shall determine whether and subject

to what conditions (if any) the amendment ought to be allowed.⁷

(6.) When leave to amend is refused by the comptroller, the person making the request may appeal from his decision to the law officer.

(7.) The law officer shall, if required, hear the person making the request and the comptroller, and may make an order determining whether, and subject to what conditions (if any) the amendment ought to be allowed (*f*).

(8.) No amendment shall be allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before amendment (*g*).

(9.) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed, except in case of fraud; and the amendment shall in all courts and for all purposes be deemed to form part of the specification (*e*).

(10.) The foregoing provisions of this section do not apply when and so long as any action for infringement or other legal proceeding in relation to a patent is pending (*h*).

¹ See form of application for amendment of specification or drawing, page 226, and rule 48.

² In the official journal of the patent office. See rule 48.

³ Grounds of opposition must be given. See rule 49. For form of opposition, see second schedule to the rules, form G, page 227.

⁴ By sending a copy of the notice of opposition to the applicant. See rule 50.

⁵ A statutory declaration in support of opposition must be left at the patent office, as prescribed by rule 51, and the further proceedings are the same as those required in the case of opposition to the grant of letters patent. See rules 32, 36, 37, 38 & 39. If applicant requires to be heard he should send notice to the comptroller. See rule 12. For form of appeal to law officer, see second schedule to rules, form T, page 240.

⁶ For rules regulating the practice and procedure on appeals to the law officer, see page 211. For requirements on allowance of amendment, see rule 54.

⁷ Comptroller may require applicant to make written or oral statements. See rule 13, page 190.

(a) Patents may be amended by: (1) disclaimer; (2) correction; and (3) explanation. Copies of the amendment must be lodged in the patent office for filing in the register of proprietors. See s. 23.

(b) That the amendment and the reasons for the same must be given in writing and advertised is not only for the purpose of inducing the comptroller to comply with the request, but also to show clearly to the public the scope of the invention.

(c) The following are circumstances in which an amendment is required: If a claim or claims be not novel, or not useful, or that the objects stated in the specification have not been attained, &c.

(d) Disclaimers might formerly be entered by any person who was a grantee, assignee, or otherwise had obtained a patent; and that such persons will be allowed by the new Act to amend their patents is evidently the use of the words, "An applicant or a *patentee*." By s. 46 *patentee* is defined to be "the person who for the time being is entitled to the benefit of a patent."

(e) Disclaimers or memoranda of alteration were not, under the 15 & 16 Vict. c. 83, receivable as evidence in any suit or action pending at the time of the filing, except

in proceedings by *scire facias* (which is now abolished). See s. 26. But when a disclaimer has been filed without the consent of the patentee, the Master of the Rolls had jurisdiction, without bill filed, to order it to be taken off the file. In *re Berdan's Patent*, L. R. 20 Eq. 346.

Leave to
amend.

(f) The granting of leave to amend is discretionary on the part of the comptroller and law officers, and the permission may be given subject to conditions.

Amend-
ment cannot
enlarge
claim.

(g) By this it will be seen that an amendment cannot, under pretence of amending something in the title or specification, enlarge the patent privilege so as to protect an invention which is either an addition to the former invention or something different from it. Speaking of a disclaimer, Lord Blackburn points out that the object is merely to take out and remove a part of what had been claimed before; and it would vitiate the new specification, if by striking out that part you gave an extended and larger sense to what is left, so as to make it embrace something which it did not embrace before. *Dudgeon v. Thomson*, 3 App. Cas. 34.

Object of
disclaimer.

The object of amendment is to cure some defect in a patent, to strike out some invalid or unnecessary matter.

"The object of the Act authorising disclaimers was plainly this, that when you have in your specification a sufficient and good description of a useful invention, but that description is imperilled or hazarded by something being annexed to it which is capable of being severed, leaving the original description in its integrity good and sufficient without the necessity of addition, then you might, by the operation of a disclaimer, lop off the vicious matter and leave the original invention, as described in the specification, untainted and unimpaired by that vicious excess." See Lord Westbury's judgment in *Ralston v. Smith*, 11 H. L. C. 223.

All the claims might be struck out if there were sufficient left in the specification to support a separate invention (*Thomas v. Welch*, L. R. 1 C. P. 192); but as, by sub. 5 of the new Act, every specification must end with a distinct

statement of the invention claimed, it is questionable if a patent so amended could be supported.

The necessity for an easy process for amending patents is shown by the case of *Simpson v. Holliday*, L. R. 1 H. L. 315, 35 L. J. Ch. 811, in which the patent was for improvements in the preparation of red and purple dyes, and the specification thus described the process: "I mix anilin with dry arsenic acid, and allow the mixture to stand for some time; or, I accelerate the operation by heating it to, or near to, its boiling point until it assumes a rich purple colour." It was proved (and not denied by the patentee) that it was necessary to apply heat in order to produce the colour; and, although evidence was given that a competent workman would apply heat, it was held that this description in the specification was bad, and that the patent founded thereon was invalid.

Clerical errors were formerly rectified by the Master of the Rolls; now this power is transferred to the comptroller, who may correct or cancel errors when the patentee has conformed with the requirements of s. 91.

(h) See *Dudgeon v. Thomson*, 3 App. Cas. 34, where a patentee, having altered his specification by disclaimer, lodged a complaint against certain manufacturers for the breach of an interdict granted anterior to the disclaimer, it was held that the patentee ought to have instituted a new action, for that, after the disclaimer, the question of enforcing the old interdict could not be entertained.

19. In an action for infringement of a patent, and in a proceeding for revocation of a patent, the Court or a judge may at any time order that the patentee shall, subject to such terms as to costs and otherwise as the Court or a judge may impose, be at liberty to apply at the patent office for leave to amend his specification by way of disclaimer (a),

Power to disclaim part of an invention during action.

and may direct that in the meantime the trial or hearing of the action shall be postponed.¹

¹ When a request for leave to amend is made by or in pursuance of an order of the court or a judge, an official or verified copy of the order shall be left with the request at the patent office. See rule 55, p. 203.

(a) The amendment allowed is by way of disclaimer, not correction or explanation, as in s. 18, sub. 1. This is an entirely new feature, and will enable a patentee, if the court allow, to save his patent by discarding claims which are not the subject-matter of a patent. It will be observed that this depends on the discretion of the court; and that permission is not likely to be given if it appear that the patentee has not taken reasonable precautions to ascertain the validity of his claims.

Restriction
on recovery
of damages.

20. Where an amendment by way of disclaimer, correction, or explanation, has been allowed under this Act, no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge (a).

Reasonable
skill and
knowledge.

(a) The position of a patent with regard to the provisions of this section will depend upon what amount of reasonable skill and knowledge the court may require, whether that of a patent agent or an unskilled applicant who applies for a protection by post. *Dudgeon v. Thomson*, 3 App. Cas. 34.

Advertise-
ment of
amendment.

21. Every amendment of a specification shall be advertised in the prescribed manner.¹

¹ In the official journal of the patent office, or in such other manner as the comptroller may direct. See rule 56, page 203.

Compulsory Licenses (a).

22. If on the petition¹ of any person interested (b) it is proved to the Board of Trade (d) that by reason of the default of a patentee to grant licenses on reasonable terms (c)—

Power for Board to order grant of licenses.

- (a.) The patent is not being worked in the United Kingdom; or
- (b.) The reasonable requirements of the public with respect to the invention cannot be supplied; or
- (c.) Any person is prevented from working or using to the best advantage (e) an invention of which he is possessed, the Board may order the patentee to grant licenses on such terms as to the amount of royalties, security for payment, or otherwise, as the Board, having regard to the nature of the invention and the circumstances of the case, may deem just, and any such order may be enforced by mandamus.²

¹ For form of application for compulsory grant of license, see second schedule to rules, form H; for form of petition, see H1, page 229; for form of opposition to the grant of compulsory license, see form I, page 230.

² For rules regulating the procedure for obtaining and opposing the grant of compulsory licenses, see rules 57-63, pp. 203-205.

(a) The utility of a system of compulsory licenses was fully discussed at the Vienna Congress, and passed by a large majority. It will prove of great public benefit if patentees are enabled by its instrumentality to combine the inventions of others with their own, and thus produce more efficient machines and products of better quality.

Compulsory licenses.

Foreign inventors who take out patents in this country without any intention of working here, but merely to prevent any competition in this country, will find it difficult to do so in future if this section is properly carried out.

Person
interested.

(b) The term "person interested" is very general, and includes a consumer, or dealer in the article.

Reasonable
require-
ments.

(c) The meaning of "reasonable requirements" will have to be interpreted by the Board of Trade.

Title of
Board of
Trade.

(d) The Board of Trade is defined by the 17 & 18 Vict. c. 104, s. 2, to mean, "The Lords of the Committee of the Privy Council appointed for the consideration of matters relating to trade and foreign plantations," and by the 24 & 25 Vict. c. 47, s. 65, they may be described in all Acts of Parliament, deeds, contracts, and other instruments by the official title of "the Board of Trade," without expressing their names.

Certificates
and docu-
ments.

All documents whatever purporting to be issued or written by or under the direction of the Board of Trade, and purporting either to be sealed with the seal of such Board, or to be signed by one of the secretaries or assistant secretaries to such Board, are received in evidence.

Best
advantage.

(e) The "best advantage" can only be reached when a free license is given, which of course cannot be intended.

Register of Patents.

Register of
patents.

23. (1.) There shall be kept at the Patent Office a book called the register of patents, wherein shall be entered the names and addresses of grantees of patents,¹ notifications of assignments (a) and of transmission of patents,² of licenses under patents, and such other matters affecting the validity or proprietorship (b) of patents as may from time to time be prescribed (c).

(2.) The register of patents shall be *primâ facie*

evidence of any matters by this Act directed or authorised to be inserted therein.

(3.) Copies of deeds, licenses, and any other documents³ affecting the proprietorship in any letters patent or in any license thereunder, must be supplied to the comptroller in the prescribed manner for filing in the Patent Office (*d*).

¹ See rule 64. For form of request by subsequent proprietors to enter name upon register of patents, and of declaration in support thereof, see second schedule to the rules, form L, page 233. See rule 65.

² For form of request to enter notification of license in register, see form M, page 234. Request must be signed (see rule 66); and particulars must be stated (see rule 67, page 206). For entry of licenses, see rule 74.

³ See rules 68 & 69.

(a) Registration relates back to date of assignment. *Hassel Assignee. v. Wright*, 10 Eq. 509. A *bond fide* assignee who has not registered is not prejudiced by the registration of the assignment of a subsequent assignee. *Green's Patent*, 24 Beav. 145. An assignee cannot bring an action unless his deed of assignment is entered in the register. *Chollett v. Hoffman*, 7 E. & B. 686, 26 L. J. Q. B. 249.

(b) Fraudulent entries make the person entering them *Entries* liable to be prosecuted for a misdemeanour (s. 93). Joint patentees cannot prejudice each other's right by entries in the register without consent. *Horsley & Knighton's Patent*, L. R. 8 Eq. 475.

(c) The court may cause the register to be altered on the *Alterations* application of any person aggrieved.

(d) Formerly copies of deeds were made by the patent *Copies* office.

Fees.

24. (1.) There shall be paid in respect of the *Fees in* several instruments described in the second *schedule*

schedule to this Act, the fees in that schedule mentioned, and there shall likewise be paid, in respect of other matters under this part of the Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade;¹ and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such a manner as the Treasury may from time to time direct.

(2.) The Board of Trade may from time to time, if they think fit, with the consent of the Treasury, reduce any of those fees (a).

¹ For a further list of fees in connection with applications for amendment of specifications, compulsory licenses, notices of opposition, enlargement of time, and other matters, see first schedule to rules, page 215.

For entry of payment of fees, or failure to pay, in the register, see rules 72 & 73.

(a) The only reduction of fees which has been effected by the Act of 1883 is in the case of applications for, and the obtaining of, the grant of letters patent from £25 to £4. Although the amount of the subsequent fees remains the same, yet there is a provision for their payment in smaller sums by instalments. See second schedule to Act.

Subsequent
payments.

Extension of Term of Patent.

Extension
of term of
patent on
petition to
Queen in
Council.

25. (1.) A patentee (a) may, after advertising in manner directed by any rules made under this section his intention to do so, present a petition to Her Majesty in Council, praying that his patent may be extended for a further term (b); but such

petition must be presented at least six months before the time limited for the expiration of the patent.

(2.) Any person may enter a caveat (*c*), addressed to the Registrar of the Council at the Council Office, against the extension.

(3.) If Her Majesty shall be pleased to refer any such petition to the Judicial Committee of the Privy Council, the said committee shall proceed to consider the same, and the petitioner and any person who has entered a caveat shall be entitled to be heard by himself or by counsel on the petition.

(4.) The Judicial Committee shall, in considering their decision, have regard to the nature and merits of the invention in relation to the public (*d*), to the profits made by the patentee as such, and to all the circumstances of the case (*e*).

(5.) If the Judicial Committee report that the patentee has been inadequately remunerated by his patent, it shall be lawful for Her Majesty in Council to extend the term of the patent for a further term not exceeding seven, or in exceptional cases fourteen, years;¹ or to order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions, and provisions that the Judicial Committee may think fit (*f*).

(6.) It shall be lawful for Her Majesty in Council to make, from time to time, rules of procedure and practice for regulating proceedings on such petitions, and subject thereto such proceedings shall be

regulated according to the existing procedure and practice in patent matters of the Judicial Committee.²

(7.) The costs of all parties of and incident to such proceedings shall be in the discretion of the Judicial Committee; and the orders of the committee respecting costs shall be enforceable as if they were orders of a division of the High Court of Justice (g).

¹ The person in whose favour such an order is made shall forthwith leave at the patent office an office copy of such order, so that the same may be duly entered on the register. See rule 71.

² For existing rules in patent cases before the Judicial Committee, see page 181.

Assignee
may apply
for prolong-
ation.

(a) A patentee is defined to be the person entitled to the benefit of a patent, and would therefore include an assignee. He must, however, show that he has a substantial interest, and has rendered services of sufficient merit in developing the patent. Thus an extension was not granted to an assignee who had taken an assignment for a small consideration of four-fifths of the patent within a few months of its expiration. In re Normand's Patent, L. R. 3 P. C. 193; In re Blake's Patent, L. R. 4 P. C. 535. For applications for prolongation of letters patent by assignees, see Whitehouse's Patent, 1 Webs. P. R. 473; Norton's Patent, 1 Moore P. C. C. (N. S.) 339. Provision must be made for inventor (Hardy's Patent, 6 Moore P. C. C. 441). Assignee must have assisted patentee (Bovill's Patent, 1 Moore P. C. C. (N. S.) 348).

Provisions
substanti-
ally same.

(b) The provisions of this Act as to prolongation of letters patent are substantially the same as those now in force; but the power of confirmation of letters patent (i.e., to make valid an invalid patent) by the Privy Council is abolished by the repeal of 5 & 6 Will. IV. c. 83. See third schedule to Act of 1883.

(c) If no caveat be entered the Judicial Committee, in the public interest, will require the applicant to show with quite as much accuracy that he is entitled to an extension. If no opposition.

(d) The essentials required in order to secure the extension of letters patent are: (1) That the invention is one of material public benefit. (2) That the inventor has been inadequately remunerated, taking into consideration the nature and merits of the invention. Essentials.

(1) If parts have not been of public utility, the useful parts only will be extended (Lee's Patent, 10 Moore P. C. C. 266; Bodmer's Patent, 8 Moore P. C. C. 282). If the invention has not been brought into practical use during the term of letters patent, it raises a strong but not conclusive presumption against its utility, and unless there are circumstances to rebut such presumption, an extension of the term of letters patent will not be granted. In re Herbert's Patent, L. R. 1 P. C. 399. In re Allan's Patent, L. R. 1 P. C. 507. In re Hughes's Patent, L. R. 4 App. Cas. 174. Prolongation of the term of letters patent was refused on the ground that the recommendation of an extension being discretionary, it would be detrimental in the public interest to grant an extension of the exclusive benefit of a metallic soap made from substances in common use. In re McInnes' Patent, L. R. 2 P. C. 54. Although the Judicial Committee will not adjudicate upon the validity of letters patent the term of which is sought to be prolonged, yet when it appears from the specification that the subject-matter is not sufficient to sustain such patent, they will not in the exercise of their discretion recommend the Crown to extend the term. In re McDougal's Patent, L. R. 2 P. C. 1. If foreign patents have been obtained, it must be so stated in the petition (In re Adair's Patent, 6 App. Cas. 176); and it was held, on the ground of general policy, the Judicial Committee of the Privy Council will not recommend a renewal of an English patent after a foreign patent has been allowed to expire. Public benefit.
Foreign patents.

(In re Winan's Patent, L. R. 4 P. C. 93; In re Blake's Patent, L. R. 4 P. C. 535); but see the judgment of their lordships in re Adair's Patent, 6 App. Cas. 176, per Sir R. P. Collier: "It has, indeed, been argued, on the part of the Crown and the opponents, that the petitioner in this case, having taken out a foreign patent, and allowed it to expire, is thereby disentitled to a renewal; but upon examination of the cases it does not appear that any of them go the length of deciding that, with respect to an English invention and an English inventor, the mere taking out of letters patent in a foreign country, and allowing them to expire, would be a reason for their refusal to renew the patent. In fact, there are two cases—the case of Betts (1 Moore P. C. C. (N. S.) 61); and the case of Poole (L. R. 1 P. C. 518)—in which the contrary has been held. Their lordships, therefore, do not give weight to that objection."

Inadequate remuneration.

(2) *That the inventor has been inadequately remunerated, taking into consideration the merit of the invention.* To entitle a patentee to a prolongation of the term of his letters patent, he must satisfactorily establish the amount of his profits (In re Trotman's Patent, L. R. 1 P. C. 118; In re Adair's Patent, 6 App. Cas. 176), and the accounts necessary for this purpose must be clear and sufficiently detailed, so that there may be no need to send them back for further particulars. Saxby's Patent, L. R. 3 P. C. 294; Clark's Patent, L. R. 3 P. C. 425. In the case of Perkins' Patent (2 Webs. P. R. 17), the accounts were not clear, and, in consequence, were sent to the Solicitor to the Treasury to examine; but the decision of their lordships in In re Saxby's Patent clearly shows the present practice. See L. R. 3 P. C. 294, per Lord Cairns: "Now it is the duty of every patentee who comes for the prolongation of his patent to take upon himself the onus of satisfying this committee, in a manner which admits of no controversy, of what has been the amount of remuneration which, on every point of view, the invention has brought to

Accounts.

him, in order that their lordships may be able to come to a conclusion, whether that remuneration may fairly be considered a sufficient reward for his invention or not. It is not for this committee to send back the accounts for further particulars, nor to dissect the accounts for the purpose of surmising what might be their real outcome if they were differently cast; it is for the applicant to bring his accounts before the committee in a shape which will leave no doubt as to what the remuneration has been that he has received." The total amount, including that of articles exported, received by the patentee in any shape or form must be stated, and from this deductions will be allowed for production, ^{Deductions from profits.} bad debts (Perkins' Patent, 2 Webs. P. R. 17), costs of litigation in protecting the patent (Betts' Patent, 1 Moore P. C. C. (N. S.) 49; Roberts' Patent, 1 Webs. P. R. 573), loss of patentee's time in bringing invention into notice (£400 per annum was allowed in the three following cases: Perkins' Patent, 2 Webs. P. R. 17; McInnes' Patent, L. R. 2 P. C. 54; Clark's Patent, L. R. 3 P. C. 421; Carr's Patent, L. R. 4 P. C. 539); cost of patents, royalties paid to agent (Poole's Patent, L. R. 1 P. C. 514); cost of experiments (Kay's Patent, 1 Webs. P. R. 572; Perkins' Patent, 2 Webs. P. R. 17).

When it was possible to separate manufacturers' profits ^{Manufacturers' profits.} from the profits made as patentee, a deduction of the former was allowed from the gross profits (see Gallo-way's Patent, 7 Jur. 453; Betts' Patent, 1 Moore P. C. C. (N. S.) 49; Hill's Patent, 1 Moore P. C. C. (N. S.) 269; Muntz' Patent, 2 Webs. P. R. 120); but since the decision in *re Saxby's Patent*, L. R. 3 P. C. 294, when a patentee is also the manufacturer, the profits which he makes as manufacturer, although not strictly profits of the patent, must yet be taken into consideration in estimating the amount of his remuneration.

With regard to the merits of an imported invention, see *In re Johnson's Patent* (Wilcox and Gibbs), L. R. 4 P. C. 81, ^{Merits of imported invention} per Lord Justice James: "Their lordships are also of

opinion that an English patentee who has obtained a patent from abroad may make out a case for the prolongation of his patent, but they must have regard to all the circumstances of the case. . . . If the commissioner from America had not, in the exercise of his discretion, thought fit to prolong the term of letters patent, then the English letters patent would necessarily have come to an end, and it would not have been in the power of the Crown to have granted a renewal or extension of the term for which the patent was originally granted. What are the merits of the case? The merits of the case, so far as regards the English patent, appear to their lordships to be *nil*. The patentee, by taking out a patent in England, has in effect secured to himself a monopoly, during a period of fourteen years, of the sale of articles manufactured in America and exported from America here."

Prolongations
granted on
conditions.

(f) Prolongations are often granted with special conditions stipulated, such as that licenses should be granted on special terms (*Mallett's Patent*, L. R. 1 P. C. 308); that the Government and its contractors should be entitled to use the inventions (*In re Napier's Patent*, 29 W. R. 745, *In re Hughes' Patent*, 4 App. Cas. 174); that the assignees who applied for the extension should hold the moiety in trust for the patentee's widow (*In re Herbert's Patents*, L. R. 1 P. C. 399).

Costs.

(g) For the considerations which induce the judicial committee of the Privy Council to give costs to *bond fide* opponents in patent cases, see *In re Wield's Patent*, L. R. 4 P. C. 89.

Evidence.

It is sufficient, prior to tendering evidence of instances of anticipation, to state the grounds of objection to the extension of letters patent, without stating all the particulars of those objections. *In re Ball's Patent*, 4 App. Cas. 171.

Revocation (a).

Revocation
of patent.

26. (1.) The proceeding by *scire facias* (b) to repeal a patent is hereby abolished.

(2.) Revocation of a patent may be obtained on petition to the Court.¹

(3.) Every ground (c) on which a patent might, at the commencement of this Act, be repealed by *scire facias* shall be available by way of defence to an action of infringement, and shall also be a ground of revocation.

(4.) A petition for revocation of a patent may be presented by (d)—

(a.) The Attorney-General in England or Ireland, or the Lord Advocate in Scotland : (g)

(b.) Any person authorised by the Attorney-General in England or Ireland, or the Lord Advocate in Scotland.

(c.) Any person alleging that the patent was obtained in fraud of his rights, or of the rights of any person under or through whom he claims :

(d.) Any person alleging that he, or any person under or through whom he claims, was the true inventor of any invention included in the claim of the patentee :

(e.) Any person alleging that he, or any person under or through whom he claims an interest in any trade, business, or manufacture, had publicly manufactured, used, or sold, within this realm, before the date of the patent, anything claimed by the patentee as his invention.

(5.) The plaintiff must deliver with his petition particulars of the objections (e) on which he means

to rely, and no evidence shall, except by leave of the Court or a judge, be admitted in proof of any objection of which particulars are not so delivered.

(6.) Particulars delivered may be from time to time amended by leave of the Court or a judge.

(7.) The defendant shall be entitled to begin, and give evidence in support of the patent, and if the plaintiff gives evidence impeaching the validity of the patent the defendant shall be entitled to reply (f).

(8.) Where a patent has been revoked on the ground of fraud, the comptroller may, on the application of the true inventor made in accordance with the provisions of this Act, grant to him a patent in lieu of and bearing the same date as the date of revocation of the patent so revoked, but the patent so granted shall cease on the expiration of the term for which the revoked patent was granted.

¹ When an order has been made by the court for the revocation of a patent, the person in whose favour such order shall have been made shall leave at the patent office an office copy of such order, so that the register may be rectified accordingly. See rule 71.

Need of
simple
means for
revocation.

(a) An inventor has rarely been refused a patent privilege although he cannot demand it as a right, on the ground that the patent is given to the patentee at his own risk on the strength of his own *ex parte* statement. For this reason in the public interest it is desirable (if the patentee has represented in his specification anything materially untrue and thereby induced the Crown to make an illegal grant) that the means for the revocation of a patent should be simple and efficacious.

(b) This is aimed at by the present Act by the repeal *scire facias*. of the costly and cumbrous proceedings by *scire facias*; and as it is anticipated that actions for the repeal of patents will now be frequent, an inventor should take great care that he well considers his specification and has the best advice in framing it. The common law has always recognised the right of the Crown by this proceeding to repeal a grant whereby it has been deceived or any of its subjects prejudiced. The action was commenced by a writ called *scire facias*, and the proceedings were conducted in the Court of Chancery.

(c) The grounds on which a patent might have been revoked by *scire facias* were similar to those objections which Grounds for revocation. might have been raised in an action for infringement. Where changes have been introduced by this Act in the procedure, of course a patent could not be revoked for not following the old procedure. The grounds, then, on which a patent may now be revoked are substantially the following :

- (1) That the title improperly describes the invention.
- (2) That the invention is not one which may be the subject* of letters patent, such as an invention for an illegal purpose, or the discovery of a principle in science.
- (3) Want of novelty.* For prior publication, see *Plimpton v. Spiller*, 6 Ch. D. 412; *Von Heyden v. Neustadt*, 28 W. R. 496; *United Telephone Company v. Cox-Walker & Co.*, 21 Ch. D. 720.
- (4) Want of utility.*
- (5) That the complete specification* describes an invention which is not substantially the same as that described in the provisional, or does not properly describe the invention. The words of the new form of letters patent are : " And whereas the said inventor hath by and in his complete specification particularly described the nature of his invention." See form D, first schedule to Act, page 172. These words take the place of the old express conditions that unless the patentee particularly described and ascertained the nature of his invention the grant should

* See Introduction.

“cease, determine, and become void.” A doubt is therefore raised as to whether a patent can any longer be revoked on this ground. See pp. 23, 25.

(6) That the patentee is not the true and first inventor or importer.

In the case of joint application, it will be sufficient to show one of the patentees to be the first and true inventor.

It will be seen that (6) differs from (3), for an invention may be not new to a patentee who has taken it from another, and yet may be new to the public, it being published for the first time in his specification.

Express conditions in letters patent.

Every patent is granted on express conditions which provide that the patent shall be void and determine—

(1) If it appear to the grantor or his heirs, or six of the Privy Council—

(a.) That the grant is contrary to law.

(b.) Or prejudicial or inconvenient to our subjects in general.

(c.) Or that the said invention is not a new invention.

(d.) Or that the said patentee is not the first and true inventor *within this realm*.

(2) (a.) If the patentee does not make the payments required by law.

(b.) Or does not supply or cause to be supplied such articles as may be required for the public service.

Persons who may present petitions.

(d) Persons who may petition without leave from the law officers are:

(1) Those who claim to be original inventors, whether the invention has been obtained from them by fraud (c), or without fraud (d).

(2) Persons who can show that they used, sold, or manufactured the invention prior to the date of the patent.

It is no objection to the grant of a patent that another person has been making experiments and working towards a similar invention. *Ex parte Henry*, L. R. 8 Ch. 167.

Assignee.

An assignee or licensee is estopped from objecting to a patent. *Bowman v. Taylor*, 2 A. & E. 278.

"A licensee under a patent is in a situation analogous to a tenant who, during his tenancy, cannot dispute the title of the lessor to any of the land held under the lease; but who is, nevertheless, at liberty to show that part of the land he actually occupies is really not comprised within the lease, but belongs to himself under some other right." Per Lord Blackburn, *Clark v. Adie*, 3 Ch. D. 134; 2 App. Cas. 423.

If a patentee has assigned his whole interest in the patent he is not a proper person to petition against, as, by clause 46, a patentee is defined to be the person for the time being entitled to the benefit of a patent.

The same clause will probably affect the decision that one of two joint patentees cannot plead that he has assigned his interest to his co-patentee before writ issued. *Regina v. Betts*, 15 Q. B. 540.

(e) The particulars of objections required are the same as those now used by the defendant in attacking the validity of a patent when pleading to the plaintiff's particulars of breaches in an action for infringement.

They must be precise and definite. For instance, in alleging prior use it is not sufficient to say that the improvements or some of them have been used before; the defendant should point out which, so that the patentee cannot be taken by surprise and unnecessary costs avoided. *Fisher v. Dewick*, 1 Webs. P. R. 264, 4 Bing. N. C. 706; *Sugg v. Silber*, 2 Q. B. D. 493. The places where the prior use has been made and the names and addresses of the users must be given. *Flower v. Lloyd*, 36 L. T. (N. S.) 444; *Crossley v. Toomey*, 2 Ch. D. 533. Evidence was not allowed unless these were given. *Palmer v. Cooper*, 9 Exch. 231. Now by sub. 5 only with leave of court.

If fraud or misrepresentation be alleged, the plaintiff must state what fraud or misrepresentation. *Russell v. Ledsam*, 11 M. & W. 647.

(f) An action by *scire facias* differed from an action for infringement in this respect, that the burden of proof was

Licensee.

Joint patentees.

Particulars of objections.

Right of reply.

on the plaintiff attacking the patent. The patentee will still, by sub. 7, have the great advantage of reply.

(g) For proceedings to be taken for revocation of a patent in Scotland, see s. 109.

Crown.

Patent to
bind Crown.

27. (1.) A patent shall have to all intents the like effect as against Her Majesty the Queen, her heirs and successors, as it has against a subject (a).

(2.) But the officers or authorities administering any department of the service of the Crown may, by themselves, their agents, contractors (b), or others, at any time after the application, use the invention for the services of the Crown on terms to be before or after the use thereof agreed on, with the approval of the Treasury, between those officers or authorities and the patentee; or, in default of such agreement, on such terms as may be settled by the Treasury after hearing all parties interested.

(a) This important section is intended to improve the position of patentees whose inventions are required in the public service by, as far as the use of inventions is concerned, placing the Queen, the grantor, on a level with her subjects.

Feather v.
the Queen.

The law before the passing of this Act was settled by the case of *Feather v. The Queen*, which determined that letters patent for inventions operate to grant an exclusive privilege to the patentee against all the subjects of the Crown; and that the Crown is not bound by them, not, strictly speaking, because it is impliedly excepted, but because the privilege granted is a privilege against subjects only, and not a privilege against the Crown. See *Feather v. The Queen*, 6 B. & S. 257, 35 L. J. Q. B. 200, and the judgment of Lord Selborne in *Dixon v. The Small Arms Company (Limited)*, 1 App. Cas. 659.

It must, however, be noted that the prerogative of the Crown as to granting or refusing letters patent is not interfered with, and that a proviso is still to be inserted in the form of letters patent to this effect: "And also if the said patentee shall not supply or cause to be supplied for our service all such articles of the said invention as may be required by the officers or commissioners administering any department of our service in such manner, and at such times, and at and upon such reasonable prices as shall be settled *in the manner for the time being by law provided*, then these our letters patent, and all privileges and advantages whatever hereby granted, shall determine and become void, notwithstanding anything hereinbefore contained:" the only alteration being that in the new form of letters patent the words "in the manner for the time being by law provided" take the place of "for that purpose by the said officers or commissioners requiring the same." See form D in the first schedule to this Act, page 172; and 15 & 16 Vict. c. 83, s. 54, and form of patent in schedule.

(b) In one important point the position of the patentee will be much worse than before, for the insertion of the words "contractors or others" permits anyone employed by the Government to use the patentee's invention in producing the articles ordered without asking his consent, paying at a future date such sum as the Treasury (who in such cases are advised by the officer or commissioner ordering the articles) may settle. In the case of *Dixon v. The Small Arms Company (Limited)*, a patent in the usual terms had been granted for an improvement in the manufacture of fire-arms. The Secretary at War issued a notice for a tender for the supply of 13,875 rifles of the description known as that patented. The price was settled, minus the cost of the steel barrels and the stocks, which the War Office was to supply. The rifles were to be delivered within a certain time; the manufacture of them might be inspected at any time, and they might be rejected by officers at the War Office if not made according to pattern or not delivered in time. The persons who took the contract

employed the patented process in the formation and insertion of the lock. It was held by the House of Lords that they were liable to the patentee for an infringement of the patent, for that they were not servants or agents of the Crown doing the work of the Crown, but were private contractors with the Crown to supply a certain manufactured article, and were therefore not protected in what they did by any particular privilege attaching to the Crown. 1 App. Cas. 632.

Legal Proceedings (c).

Hearing
with
assessor.

28. (1). In an action or proceeding for infringement or revocation of a patent, the Court may, if it think fit, and shall, on the request of either of the parties to the proceeding, call in the aid of an assessor (a) specially qualified, and try and hear the case wholly or partially with his assistance. The action shall be tried without a jury unless the court shall otherwise direct.

(2.) The Court of Appeal or the Judicial Committee of the Privy Council may, if they see fit, in any proceeding before them respectively, call in the aid of an assessor as aforesaid (b).

(3). The remuneration (if any) to be paid to an assessor under this section shall be determined by the Court or the Court of Appeal or Judicial Committee, as the case may be, and be paid in the same manner as the other expenses of the execution of this Act.

Assessor.

(a) By s. 56 of the Supreme Court of Judicature Act, 1873, the High Court of the Court of Appeal may in any cause or matter, in which it may think it expedient to do so,

call in the aid of one or more assessors, specially qualified, and try and hear such cause or matter, wholly or partially, with the assistance of such assessors, the option being with the court. By the above section, not only has the court the option, *but either party* to a suit may require the court to call in the aid of an assessor or assessors.

In the case of *Badische Anilin & Soda Fabrik v. Levenstein*, 24 Ch. D. 156, 48 L. T. (N. S.) 822, in which the question was as to the validity of a patent for making dyes, Mr. Justice Pearson said that he could not decide the case without having experiments made by an independent scientific chemist approved by the court. His lordship then gave directions that, by way of experiment, the process should be performed as described in the specification by the chemist so appointed, who was to state the result; and if he found any difficulty, he was to receive instructions from the judge personally, and that each party might choose a chemist as a representative at the experiment. W. N. 1883, p. 62. The function of a special or official referee is to supply the court with information and materials necessary for arriving at a conclusion upon the question. Experiments.

“The Court” means (subject to the provisions for Scotland, Ireland, and the Isle of Man, see s. 107–112) Her Majesty’s High Court of Justice in England.

(b) Under this subsection the suitors have no power to require the Court of Appeal, or the Judicial Committee of the Privy Council, to call in assessors such as is given them by sub. 1 in an action before the Court.

(c) Since the Judicature Acts of 1873 and 1875 it has been immaterial whether legal proceedings concerning patents have been taken in the Queen’s Bench division or the Chancery division of the High Court of Justice; and injunctions, damages, accounts of profits have been obtained in either division of the High Court of Justice. By sub. 1, in the trial of patents, the procedure in both divisions will be made almost identical, inasmuch as causes are to be tried without a jury, as formerly in the Trial of patent cases.

By jury. Chancery division, unless the court shall otherwise direct. A trial by jury cannot be before a judge of the Chancery division; actions commenced in the Chancery division, if they are to be tried by a jury, must be set down in the general list to be tried by one of the judges of the Common Law division. *Murdoch v. Warner*, 4 Ch. D. 750.

Delivery of particulars.

29. (1.) In an action for infringement of a patent the plaintiff (*a*) must deliver with his statement of claim (*b*), or by order of the Court or the judge, at any subsequent time, particulars of the breaches (*c*) complained of.

(2.) The defendant must deliver with his statement of defence (*d*), or, by order of the Court or a judge, at any subsequent time, particulars of any objections (*e*) on which he relies in support thereof.

(3.) If the defendant disputes the validity of the patent, the particulars delivered by him must state on what grounds he disputes it, and if one of those grounds is want of novelty, must state the time and place of the previous publication or user alleged by him.

(4.) At the hearing no evidence shall, except by leave of the Court or a judge, be admitted in proof of any alleged infringement or objection of which particulars are not so delivered (*f*).

(5.) Particulars delivered may be from time to time amended, by leave of the Court or a judge.

(6.) On taxation of costs regard shall be had to the particulars delivered by the plaintiff and by the defendant; and they respectively shall not be allowed any costs in respect of any particular

delivered by them, unless the same is certified by the Court or a judge to have been proven or to have been reasonable and proper, without regard to the general costs of the case (*g*).

(*a*) The plaintiff must be the patentee, or the person ^{Parties.} entitled to the benefit of the patent at the time of the alleged infringement. Any person who has directly or indirectly committed the alleged infringement may be made the defendant.

If the patentee has assigned his whole interest in his patent, he is no longer a patentee, according to the definition ^{If patentee has assigned his interest.} given in s. 46, and cannot maintain an action for infringement.

The assignee, or assignee and patentee jointly, may ^{Assignee.} sue. *Dunnicliff v. Mallett*, 7 C. B. (N. S.) 209; *The Electric Telegraph Company v. Brett*, 10 C. B. 838; *Boulton v. Bull*, 2 H. Bl. 463.

A mere licensee cannot sue, but an exclusive licensee ^{Licensee.} may sue in the name of a patentee. *Derosne v. Fairie*, 1 Webs. P. R. 154; *Renard v. Levenstein*, 2 H. & M. 628.

By the Bankruptcy Act, 1883, the effect of the receiving ^{Bankruptcy} order is to transfer the whole property of the debtor to the official receiver, without any conveyance, assignment, or transfer whatever. He or the trustee has therefore the right to sue for infringement. *Bloxam v. Elsee*, 6 B. & C. 169.

Executors and administrators may also maintain an ^{Executors.} action for infringement, when the patent becomes vested in them, as patents are expressly limited to executors, administrators, and assigns. See form D, first schedule, and *Williams on Executors*, 7 ed. p. 817.

(*b*) The form of statement of claim given by ^{Form of statement of claim.} Appendix C to the new rules of the Supreme Court of Judicature, 1883, is:

No. 6.

Injunction, &c., for Infringement of Patent.

The defendant has infringed the plaintiff's patent,

No. 14,084, granted for a term of fourteen years from the 21st of May, 1880, for certain improvements in the manufacture of iron and steel, whereof the plaintiff was the first inventor.

The plaintiff claims an injunction to restrain the defendant from further infringement, and £100 damages.

Particulars of breaches are delivered herewith.

Place of trial, Durham.

Signed
Delivered

In an action to restrain an infringement of a patent an express averment of the novelty of the invention protected by the patent is not necessary. *Amory v. Brown*, L. R. 8 Eq. 636.

Particulars
of breaches.

(c) Particulars of breaches and objections ought to be very minutely prepared, as costs will not be recovered in respect of any particular, the allegations of which have not been certified to be proved, or to have been reasonable and proper, by the court.

If infringement
made
an exhibit.

The object of particulars of breaches is to give the defendants full and fair particulars of the case they shall have to meet, so that they shall not be taken by surprise. A plaintiff may be ordered to point out the alleged infringement of the patent by reference to the pages and lines of the specification (*Lamb v. The Nottingham Manufacturers' Company*; *Seton on Decrees*, 4th ed. 349); but it is not necessary, in the case of an alleged infringement of a patent for improvements in a particular article (e.g. cartridges), for the particulars to point out the precise portions of the specifications alleged to have been infringed, when the thing alleged to be an infringement has been made an exhibit. *Batley v. Kynock*, L. R. 19 Eq. 229.

In an action to restrain the infringement of a patent for improvements in cabs, the plaintiffs, by their statement of claim, stated that they had recently ascertained that the defendant had infringed their said letters patent, "and, in particular, that he built and sold to Colonel B., who was

a customer, a hansom cab in accordance with the said invention." On a summons being taken out by the defendant for particulars of breaches and instances of infringement, it was held (following *Finnegan v. James*, L. R. 19 Eq. 72), that the plaintiffs had sufficiently set out the particulars of breaches in the statement of claim, and that the defendant was not entitled to any further particulars. *Forder v. Forder*, *Law Times*, May 27, 1882.

When the defendant has not applied for amended particulars, as in the case of *Hull v. Bollard*, 25 L. J. Ex. 304; 1 H. & N. 134, evidence is admitted of a breach not mentioned by name in the particulars, provided that such admission does not create surprise or introduce new points not raised in the other particulars of breach. Should such be raised, an opportunity would be given to the defendant to bring fresh evidence. *Sykes v. Howarth*, L. R. 12 Ch. D. 826; 41 L. T. (N. S.) 79.

(d) The form of defence given in App. D to the Judicature Acts and rules, 1873-1883, is: Form of statement of defence.

- (1) The defendant did not infringe the patent.
- (2) The invention was not new.
- (3) The plaintiff was not the first and true inventor.
- (4) The invention was not useful.
- (5) Denial of any other matter of fact affecting the validity of the patent.
- (6) The patent was not assigned to the plaintiff.

An objection to the validity of a patent on the ground of the expiration of a foreign patent for the same invention cannot be taken at the hearing of a suit to restrain the infringement of the patent, unless it has been raised by the answer. *Bovill v. Goodier*, L. R. 2 Eq. 195.

(e) Where the defendant in a patent action applies after notice of trial for leave to amend his particulars of objections, leave will only be granted on certain terms as to costs and otherwise. The plaintiff will have time to elect to discontinue, and the defendant will have to pay the costs of the application. For the form of order in such case, see *The Edison Telephone Company of London (Limited) v.* Particulars of objections.

The India Rubber, Gutta Percha, and Telegraph Works Company (Limited), 29 W. R. 496. See particulars of objection under Revocation, s. 26.

Evidence.

(f) Where, in an action to restrain the infringement of a patent, the defendants do not confine themselves to meeting the case opened by the plaintiff, but open and call evidence to prove an entirely different case, the plaintiff is entitled to call evidence in reply, and notwithstanding s. 41 of 15 & 16 Vict. c. 83 (the provisions in sub. 4 of this section are substantially the same as s. 41 of this Act, which is now repealed), to give instances of infringement not included in his particulars of breaches delivered in the action. *Adair v. Young*, App. to *Higgins' Digest of Patent Cases*, p. 77.

The court will at any time during the progress of a patent suit allow the defendant to raise a fresh issue on the discovery of facts which could not with due diligence have been discovered before. *Holste v. Robertson*, 4 Ch. D. 9.

When particulars of breach of a patent allege divers sales between certain dates, and particularly to two persons, and an answer of the defendant admitted a sale to H. (a third person), evidence of the transaction with H. was admitted. *Sykes v. Howarth*, 12 Ch. D. 826, 41 L. T. (N. S.) 79.

Costs. 5 & 6
Wm. IV.,
c. 83, s. 6.

(g) Subsection 6 takes the place of the 5 & 6 Wm. IV., c. 83, s. 6, which is now repealed, but which is here quoted as showing the object of this subsection.

"In any action for infringing letters patent, in taxing the costs thereof, regard shall be had to the part of such case which has been proved at the trial, which shall be certified by the judge before whom the same shall be heard; and the costs of each part of the case shall be given according as each party has succeeded or failed therein, regard being had to the notices of objections as well as the counts in the declaration and without regard to the general results of the trial."

In an action for the infringement of a patent the defendant obtained a verdict on one issue which covered the whole

cause : Held, that he was entitled to the costs of that issue and the general costs of the cause, subject to deduction in respect of the issues found for the plaintiff. *Losh v. Hague*, 7 D. P. C. 495; 5 M. & W. 387; 3 Jur. 409.

The certificate of the judge who tries the cause, that the defendant's particulars of objection have been proved by him is a condition precedent to his right on taxation to any costs in respect of such particulars, even in the case of a nonsuit. *Honiball v. Bloomer*, 10 Ex. 535.

30. In an action for infringement of a patent, the Court or a judge may, on the application of either party, make such order for an injunction (a), inspection (c), or account (b), and impose such terms and give such directions respecting the same and the proceedings thereon as the Court or a judge may see fit.

Order for inspection, &c., in action.

(a) See s. 25, sub. 8, Judicature Act, 1873, and order 50, Injunction. rules 5 & 6, Conf. Kerr's Treatise on the Law and Practice of Injunction (1875), Seton's Forms of Decrees.

The plaintiff, if he omits to move for an injunction at an early period of the cause, first shows that he does not consider the injunction as immediately necessary for the protection of his interests, and next imposes upon himself the obligation of making out a clear and unexceptionable title at the hearing. *Bacon v. Spottiswoode*, 1 Beav. 382; *Goodeve's Abs. P. C.* 10; *Budson v. Benecke*, 12 Beav. 1.

Time to move for.

In *Hill v. Thompson* (1 Webs. Pat. R. 232), Lord Eldon, in ordering an action at law with an account, said : "The principle upon which the court acts in cases of this description is the following : Where a patent has been granted, and there has been an exclusive possession of some duration under it, the court will interpose its injunction without putting the party previously to establish the validity of his patent by an action at law. But where the patent is but of yesterday, and, upon an application being made for

Principles upon which injunction is granted.

an injunction, it is endeavoured to be shown in opposition to it that there is no good specification, or otherwise that the patent ought not to have been granted, the court will not, from its own notions respecting the matter in dispute, act upon the presumed validity or invalidity of the patent, without the right having been ascertained by a previous trial, but will send the patentee to law, and oblige him to establish the validity of his patent in a court of law, before it will grant him the benefit of an injunction."

The court, instead of granting an injunction, may require the plaintiff to establish his title at law, the defendant in the meantime to keep an account. *Bacon v. Jones* (Goodeve, Abs. P. C. 12; Myl. & Cr. 433). For the considerations which influence the court in granting an injunction, see *Electric Telegraph Co. v. Nott*, 4 C. B. 462; 2 Coop. C. C. 41.

Although the court is not bound to grant an injunction, it will generally do so after long enjoyment of a patent. *Harmer v. Playne*, 14 Ves. 133; *Betts v. Menzies* (Goodeve, Abs. P. C. 22); *Beestson v. Ford*, 2 Coop. Ch. Cas. 58; *Davenport v. Richard*, 3 L. T. (N. S.) 503; *Newell v. Wilson*, 2 De G. M. & G. 282; *Plimpton v. Spiller*, 4 Ch. D. 286.

When a patent has been granted for improvements in a machine, the subject of a prior patent, of which a license has been granted to the owner of the improved patent, the patentee was held not entitled to an interim injunction, as the time during which he worked his patent in conjunction with the license did not count, and there had not been a sufficiently long user since the expiration of the former patent. *Heugh v. Magill*, W. N. 1877, p. 62.

Injunction
to restrain
sale of im-
ported
articles.

In a suit to restrain the sale of an article patented in England, the plaintiff must not only prove that the article was not made at his manufactory in England, but also that it was not made at his factories abroad. *Betts v. Wilmot*, L. R. 6 Ch. 239.

It is no ground for suspending the operation of an injunction that the defendant's business connection would

be destroyed, for the requisite articles could be bought in the market and the contracts fulfilled. *Flower v. Lloyd*, 36 L. T. (N. S.) 444.

An injunction may be granted to restrain a *threatened* infringement; for where the defendant alleges an intention to infringe, and claims the right to infringe, the mischief done to the patent is great; but it must be plain that what is intended to be done is really an infringement. *Frearson v. Loe*, L. R. 9 Ch. 48. Threatened infringement.

An injunction was granted restraining captain of a ship from using machinery necessary to navigation, although he had nothing to do with putting them on board. *Adair v. Young*, 12 Ch. D. 13. Injunction against a ship's captain.

A foreign sovereign, notwithstanding an injunction, may remove his property. "The court cannot proceed to give that relief" (preventing the use of articles which infringed the patent) "and interfere with the articles unless it has before it the person entitled to the articles in question, and has as against this person power to adjudicate that the articles are made or used in infringement of the plaintiff's rights. As against a foreign sovereign how could that be done? If these things, as on the evidence we must take them to be, are the property of the state of which the Mikado is sovereign, I can see no possible ground for interfering on any such principle as that on which the court acts when a defendant, subject to its jurisdiction, having been shown to have infringed the plaintiff's rights, the plaintiff gets this relief: that either the articles are destroyed or the objectionable portion is removed." Foreign sovereign.

Per Cotton (L. J.), *Vavasseur v. Krupp*, 9 Ch. D. 360.

The court, in a suit to restrain the infringement of a patent, does not proceed on the footing that the defendant proved to have infringed has no property in the articles; but, assuming the property to be in him, it prevents the use of those articles, either by removing that which constitutes the infringement, or by ordering, if necessary, a destruction of the articles, so as to prevent them from Ground on which court acts.

being used in derogation of the plaintiff's rights, and does this as the most effectual mode of protecting the plaintiff's rights—not on the footing that there is no property in the defendant. *Vavasseur v. Krupp*, 9 Ch. D. 351.

Against
numerous
infringers.

When an interlocutory injunction is sought against numerous persons infringing a patent, the patentee ought to select the case he thinks will try the question fairly. He should then write to each of the infringers who is in *simili casu*, and ask if he is willing to take this as a notice that the present case is to determine his; if this consent is not given, the patentee ought to proceed against such infringers as refuse. *Bovill v. Crate*, L. R. 1 Eq. 388.

Against
owner of
similar
patents.

When two patents are granted for the same invention, the proper course is not to proceed by injunction, but for each patentee to petition the court for the revocation of the other's patent. Formerly this was done by *scire facias*, now by petition to the court. See s. 26; *Copeland v. Webb*, 11 W. R. 134, *Goode v. Ales*, P. O. 83.

Breach of
injunction.

For breach of injunction, see *Murray v. Clayton*, L. R. 7 Ch. 570, L. R. 15 Eq. 115.

Injunction
to take
effect after
expiry of a
patent.

Where a large quantity of articles had been manufactured just before the expiry of a patent, to flood the market, an injunction was granted to continue in effect even after the expiry of plaintiff's patent. *Crossley and others v. Potter and others* (*Macrory's Pat. Ca.* 240).

Action for
accounts
may be com-
menced in
Q. B. D.

(b) By s. 34 of Judicature Act, 1873, *subject to the rules of court*, all causes and matters for the taking of accounts were assigned to the Chancery division, and it is usual to bring actions in patents cases, where an account is desired, in that division. However, as by order 33, rule 2, rules of court, 1883, as well as by the above section (s. 30 to Act) in patents cases the court or a judge has power to direct any necessary inquiries or accounts to be taken. A writ of summons issued in the Queen's Bench division may be endorsed with a claim for an account. See *York v. Stowers*, W. N. 1883, page 174, when it was held by Mr. Justice Field that an order for an account can now be made in the Queen's Bench division. The words of

order 15, rule 1—"With all necessary inquiries and directions now usual in the Chancery division in similar cases" New rule, Judicature Act, 1883.—show that it was contemplated that an order under that rule might be made elsewhere than in the Chancery division. "This account can be quite well taken in the Queen's Bench division, and it is important that this order, which is for the saving of expense by shortening proceedings, should be put in force in both divisions."

A plaintiff cannot have both damages and an account of profits, but must elect which of the two he will adopt. *Neilson v. Betts*, L. R. 5 H. L. 1; *De Vitre v. Betts*, L. R. 6 H. L. 314.

Before an order for an account of profits to be taken will be granted, a strong case must be established that the defendant has made profits by the infringement of the patent. *Lister v. Eastwood*, 2 Higgins' Patent Digest, 427. The account is one of profits made by the infringer, and not of the loss which the plaintiff has sustained by the infringement. *Ellwood v. Christy*, 18 C. B. (N. S.) 494.

The inquiry extends to the sale by the defendants of any articles manufactured by them within six years before the filing of the bill and up to the expiry of the patent. *Davenport v. Rylands*, L. R. 1 Eq. 302.

In actions for damages and account of profits there is the following difference between a patent and a trade mark. In an action for damages for use of a trade mark the plaintiff must show what he has actually lost by the piracy, and it will not be assumed that all the articles sold by the defendant would have been sold by the plaintiff. On the other hand, when a patent is infringed, the infringer must pay for every sale without license of the article manufactured under the patent, for the owner of a patent has the exclusive right to manufacture, whereas the owner of a trade mark only acquires the right to prevent others representing goods manufactured by them to have been prepared or sold by him. *The Leather Cloth Company v. Hirschfield*, L. R. 1 Eq. 279; *Davenport v. Rylands*, L. R. 1 Eq. 299.

In stating the account, the defendant must file an affidavit Affidavit.

giving the number of articles sold by him since the date of the patent, and the names and addresses of the purchasers to whom the same have been sold. *Murray v. Clayton*, L. R. 15 Eq. 115.

Production of books.

If the defendant, in an action for infringement after judgment has been given against him, refuse production of his books to prove his figures when an account is taken, the proper course for the plaintiff is to obtain production in the ordinary way, and not to disallow for the defendants' amounts. *The British Dynamite Company v. Krebs*, 25 S. T. 316.

Licensee.

The accounts will not extend to sales before the date of the license when the licensee is the plaintiff. *Ellwood v. Christy*, 18 C. B. (N. S.) 494.

Manufacturers and users.

The patentee may not only have an account against the manufacturer of the articles infringing his patent, but also against the users of the same. But if the users pay the ordinary royalty to the patentee, no further amount can be recovered from the manufacturer. See *Penn v. Bibby*, L. R. 3 Eq. 308, and *Penn v. Jack*, L. R. 5 Eq. 81.

Proof for account of profits in bankruptcy.

The right of a patentee to an account of profits made by an infringer of his patent is not a demand in the nature of unliquidated damages arising otherwise than by reason of a contract within the meaning of s. 31 of the Bankruptcy Act, 1869, and the patentee may therefore prove under the bankruptcy. *Watson v. Holliday*, 46 L. T. (N. S.) 878; 20 Ch. D. 781; 48 L. T. (N. S.) 545.

Inspection.

(c) Inspection does not refer to inspection of books, which is provided for by another Act of Parliament. *Vidi v. Smith*, 23 L. J. Q. B. 342. By order 50, rule 3 (the rules S. C. 1883) it is provided:

"It shall be lawful for the court or a judge, upon the application of any party to a cause or matter, and upon such terms as shall be just, to make an order for the detention, preservation, or inspection of any property or thing being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid, to authorise any persons to enter upon or into any land or building in the possession of any party to such cause

or matter, and, for all or any of the purposes aforesaid, to authorise any samples to be taken, or any observation to be made, or experiment to be tried which may be necessary or expedient for the purpose of obtaining full information or evidence."

An order was made in chambers for the inspection of the defendant's property, the costs of the inspection to be paid by the plaintiff. It was held that under this rule the judge had a discretion to order the plaintiff to pay the costs, and this order being made in his discretion, the plaintiff had no right without leave to appeal from it. Costs of inspection.

For the extent of inspection allowed, see the following cases. Extent of inspection.

The plaintiff, on making out a *prima facie* case of infringement, and showing that an inspection is requisite to prove his case, will be allowed to do so, even when the machinery is at work, on giving reasonable notice to the defendant. A similar order may be granted to the defendant to inspect the plaintiff's works. *Morgan v. Seaward*, 1 Webs. P. R. 169; *Bovill v. Moore*, 2 Coop. C. C. 56; *Russell v. Cowley* (in this case the inspection was by consent), 1 W. P. C. 457; *Davenport v. Jepson*, 1 N. R. 308; the *Patent Type Founding Co. v. Lloyd*, 5 H. & N. 192. This last is a case in which their lordships refused an application to order a portion of the type to be delivered up for analysis, on the grounds first, that it was very doubtful whether it had power to grant such an application under any circumstances; second, that even if it had such power, it must be clearly shown that there had been an infringement; and, third, that an order for simple inspection would not be granted unless the case were such that the Court of Equity would grant an injunction. But, on the other hand, on the application of the same plaintiffs, an order was made to deliver a sample of type to them for analysis.

In the case of the *Badische Anilin & Soda Fabrik Co. v. Levenstein* (48 L. T. (N.S.) 822; 24 Ch. D. 156), Mr. Justice Pearson appointed a scientific chemist to try experiments. See s. 28 and note.

When it is probable that the defendants would be injured

in their business by inspection of their premises, the articles are sent to the plaintiff's solicitor's office for inspection by the plaintiff's solicitor and two scientific witnesses (*Singer Manufacturing Co. v. Wilson*, 13 W. R. 563), and not by plaintiff himself. *Flower v. Lloyd*, W. N. 1876, pp. 169 & 230. An order will not be made, on the application of the plaintiff, in a suit to restrain an alleged infringement of his patent, for inspection of the defendant's works and machinery, unless the court is satisfied that the inspection is essential to prove his case (*Batley v. Kynock*, L. R. 19 Eq. 90); and that there is really a case to be tried at the hearing of the cause. *Piggott v. the Anglo-American Telegraph Co.*, 19 L. T. (N. S.) 46.

Inspection
abroad.

An order will not be made to inspect abroad. *Neilson v. Betts*, L. R. 5 H. L. 1.

Certificate
of validity
questioned
and costs
thereon.

31. In an action for infringement of a patent, the Court or a judge may certify that the validity of the patent came in question; and if the Court or judge so certifies, then in any subsequent action for infringement, the plaintiff in that action, on obtaining a final order or judgment in his favour, shall have his full costs, charges, and expenses, as between solicitor and client, unless the Court or judge trying the action certifies that he ought not to have the same (a).

Costs in
subsequent
actions.

(a) This section is to the same effect as s. 43 of the 15 & 16 Vict. c. 83, which provides that the plaintiff, on obtaining a decree in his favour, is to have his full costs, as between solicitor and client, in subsequent actions decided in his favour, unless the judge certifies that he ought not. Many examples might be given in which full costs ought not to be allowed, such as in the case of a collusive action being brought in the first instance to establish the validity of a patent, so as to secure the benefit of this pro-

vision in subsequent actions. The object of the section is to prevent patentees being under the necessity of bringing repeated actions to determine their rights after the principle had been once established. *Davenport v. Rylands*, L. R. 1 Eq. 308.

When a certificate had been given to the patentee, but on appeal a new trial (which never took place) granted, the successful termination of subsequent proceedings does not entitle the patentee to full costs, because the action being compromised, the validity of the patent was not fairly and completely tried. *Betts v. de Vitre*, 11 Jur. (N. S.) 9.

First actions must be fairly tried.

Full costs may be given if, in the prior action, the validity of the patent has not been called in question, but a certificate granted. *Davenport v. Rylands*, L. R. 1 Eq. 308.

But if the defendant at the trial consents to a verdict without any evidence being given, the judge will not certify that the validity of the patent came in question before him. *Stocker v. Rodgers*, 1 O. & K. 99. The record and the certificate must be given in evidence. It is too late when the cause has been disposed of to do so on ex parte application. *Bovill v. Hadley*, 17 C. B. (N. S.) 435; 10 L. T. (N. S.) 650.

Cannot be obtained on ex parte application.

32. Where any person claiming to be the patentee of an invention, by circulars, advertisements, or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged manufacture, use, sale, or purchase of the invention, any person or persons aggrieved thereby may bring an action against him, and may obtain an injunction against the continuance of such threats (a), and may recover such damage (b) (if any) as may have been sustained thereby, if the alleged manufacture, use, sale, or purchase, to which the threats related was not in fact an in-

Remedy in case of groundless threats of legal proceedings.

infringement of any legal rights of the person making such threats: (c) Provided that this section shall not apply if the person making such threats with due diligence commences and prosecutes an action for infringement of his patent.

Injunction. (a) This section introduces into patent law a novel feature, so far as positive enactment is concerned. Legal proceedings have, however, been frequent to restrain patentees wrongfully threatening persons whom they allege to have infringed their patents.

**Halsey v.
Brother-
hood.**

In the case of *Wren v. Weild* (L. R. 4 Q. B. 730), it was held that, where a person claims a right in himself which he intends to enforce against a purchaser, he is entitled, and in common fairness bound, to give the intending purchaser warning of his intention; and that no action lies for giving such preliminary warning, unless it can be shown either that the threat was made *malâ fide*, only with the intent to injure the vendor and without any purpose to follow it up by an action against the purchaser, or that the circumstances were such as to make the bringing an action altogether wrongful. In referring to this case, the late Master of the Rolls, in the case of *Halsey v. Brotherhood*, L. R. 15 Ch. D. 519, said: "It is quite clear that Mr. Justice (now Lord Justice) Blackburn, in delivering judgment, considered that to support the action" (*i. e.*, an action for damages against the patentee threatening proceedings) "the allegations must not only assert the statement to be untrue, but that it was made without reasonable and probable cause. That is the judgment of the full court, and it appears to me to be the substance of the law. A man merely giving notice that his rights are being infringed, believing that they are infringed, is not to be subject to an action for giving that notice, even although he does not follow up that notice by bringing an action at law for the infringement."

It must, however, be noticed that the cause of *Wren v.*

Weild was an action for damages, and that, although the patentee giving the notice and using the threats was not subject to an action for damages, yet he was liable to be restrained by injunction.

(b) This distinction is, however, done away with by the *Damages*. above section, and the person aggrieved may not only obtain an injunction but also recover such damage as he may have sustained.

(c) This proviso improves the position of a patentee in this respect, that if he proceeds with due diligence against the persons he alleges to have infringed, they cannot bring an action against him for damages, or obtain an injunction against him. The infringers would then be defendants in the cause, and would have to prove that they had not been guilty of infringement; or, if they questioned the legality of the patentee's title, that it is invalid; for a patent is *prima facie* good as long as it stands, and the person who alleges it is not good must prove it. See the judgment of the M. R. in *Halsey v. Brotherhood*, commenting on the case of *Rollins v. Hinks*, L. R. 13 Eq. 355, in which Vice-Chancellor Malins held that there is no presumption at law in favour of the validity of a patent.

Any person who has been threatened must therefore, *Evidence*. before he can obtain an injunction or recover damages, prove either (1) that he has not infringed the patent; or (2) that the patent is not a legal right of the patentee; or (3) that the assertions in the circular or advertisement are not true. (4) If the action is for damages, the plaintiff must show that he has suffered the loss complained of. (5) If the action is for an injunction, he must make out that the defendant intends to persevere in making the representations complained of, although his allegation of infringement by the plaintiff is untrue.

Of course the patentee is not bound, after having issued a circular or advertisement, to proceed against the parties he alleges to have infringed. The person may desist, or, if he does not desist, he may not be worth suing, and there can be no obligation on a patentee, in addition to the loss

incurred by the infringement, to incur the further cost of bringing an expensive action. See *Halsey v. Brotherhood*, 15 Ch. D. 518; *Burnett v. Tate*, 45 L. T. (N. S.) 743.

Slander of
title.

For slander of title see the following cases: *Smith v. Spooner*, 3 Taunt. 246; *Pitt v. Donovan*, 1 M. & S. 639; *Pater v. Baker*, 3 C. B. 831; *Malachy v. Soper*, 3 Bing. N. C. 371; *Ingram v. Lawson*, 6 Bing. N. C. 212; *Green v. Button*, 2 C. M. & R. 707; *Evans v. Harlow*, 5 Q. B. 624; *Sellers v. Dickinson*, 5 Ex. 312; 20 L. J. Ex. 417; *Wren v. Weild*, 4 Q. B. 736; *Rollins v. Hinks*, 13 Eq. 355; *Axman v. Lund*, L. R. 18 Eq. 330; *Halsey v. Brotherhood*, 15 Ch. D. 514.

Minatory
circulars.

An injunction was granted to restrain United Telephone Company issuing minatory circulars against the users of Hemmings' transmitter. The English courts, contrary to the prior decision of the Scotch courts, had found that there was no infringement, and it was therefore held that to continue to issue the notice without correcting the statements contained in it which were contrary to the decision, or at least stating the effect of that decision, was a wrongful act, and was injurious to the owners of Hemmings' patent. *London and Globe Telephone Company v. United Telephone Company*, not reported.

Miscellaneous.

Patent for
one inven-
tion only.

33. Every patent may be in the form in the first schedule to this Act, and shall be granted for one invention¹ only (a), but may contain more than one claim (b); but it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it comprises more than one invention (c).

¹ Where a person making application for a patent includes therein by mistake, inadvertence, or otherwise, more than one invention, he may, after the refusal of the comp-

troller to accept such application, amend the same so as to apply to one invention only, and make application for separate patents for such invention accordingly. See rule 23.

(a) This granting of letters patent for one invention only was ordered by the second set of rules and regulations under the Act 15 & 16 Vict. c. 83, rule 7, which provided that "No warrant is to be granted for the sealing of any letters patent which contains two or more distinct substantive inventions;" and this was rescinded by the third set of rules, dated the 15th Oct., 1852, and replaced by rule 1 of that date, which ordered that "Every application for letters patent, and every title of invention and provisional specification, must be limited to one invention only; and no provisional protection will be allowed, or warrant granted, when the title or provisional specification embraces more than one invention." This rule has, however, seldom been enforced, and if it is strictly adhered to under the new Act, it will cause much trouble in the framing of specifications.

Under rules
to Act of
1852.

(b) Strictly speaking, if there be more than one claim, one must not contain more than the other, or anything different from the other, because each claim must be an invention, or it could not be supported, and if one claim contained more than another there would clearly be a further invention.

Claim.

(c) If a patent has once been granted, the patentee need have no further anxiety as to his specification and claim embracing more than one invention until the time arrives for applying for an extension of the letters patent.

34. (1.) If a person possessed of an invention dies without making application for a patent for the invention, application may be made by, and a patent for the invention granted to, his legal representative (a).

Patent on
application
of represen-
tative of
deceased
inventor.

(2.) Every such application must be made within six months of the decease of such person, and must contain a declaration by the legal representative that he believes such person to be the true and first inventor of the invention.¹

¹ An application for a patent by the legal representative of a person who has died possessed of an invention shall be accompanied by an official copy of, or an extract from, his will, or the letters of administration granted of his estate and effects, in proof of the applicant's title as such legal representative. See rule 24.

Communi-
cation.

(a) Before the passing of this Act there was no provision for the legal representative of a deceased inventor taking out a patent for an invention of the deceased. This was attempted to be done in the case of *Marsden v. The Saville Street Foundry and Engineering Company (Limited)*. (L. R. 3 Ex. D. 203) by considering the specification which described the invention, and was found among the deceased's papers, as a communication from the deceased. A patent having been granted to the administratrix, it was held void, on the ground that a communication, made in England by one British subject to another, of an invention, does not make the person to whom the invention is communicated, the first and true inventor within the meaning of the Statute of Monopolies, so as to take out letters patent for an invention. See notes (b) to s. 4, and (e) to s. 5, sub. 2.

Extension of patent has been granted to the executrix and administratrix of patentees. *Porter's Patent*, 2 Webs. P. R. 199, note g; *Downton's Patent*, 1 Webs. P. R. 565; *Heath's Patent*, 8 Moo. P. C. C. 217.

For provision, if a person, making the application, die before sealing, see s. 12, and note.

Patent to
first inven-
tor not in-
validated
by appli-
cation in
fraud of
him.

35. A patent granted to the true and first inventor shall not be invalidated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the in-

vention subsequent to that fraudulent application during the period of provisional protection (a).

(a) This section is, in substance, the same as 15 & 16 Vict., c. 83, s. 10.

Formerly there was an appeal from the law officer to Appeal. the Lord Chancellor; now the decision of the law officer is final. See ss. 7 and 11 of Patent Act, 1883.

In re Vincent's Patent, L. R. 2 Ch. 341 where the sealing of a patent was opposed, on the ground of previous public user of the invention, in reply to which the applicant alleged that such user was obtained by fraud of him, Lord Chelmsford held that it was a question of fact, to be tried by a jury, and that the patent ought to be sealed, so that such trial might not be precluded. ^{Vincent's patent.}

36. A patentee may assign his patent for any place in or part of the United Kingdom or Isle of Man, as effectually as if the patent were originally granted to extend to that place or part only.¹ ^{Assignment for particular places.}

¹ When a person becomes entitled to a patent or any share or interest therein by assignment either throughout the United Kingdom and the Isle of Man, or for any place or places therein a request for the entry of his name in the register should be addressed to the comptroller and left at the patent office. See rule 65. For form of request to enter name upon the register of patents and of declarations in support thereof, see second schedule to the rules, form L, page 233.

Such request must be signed. See rule 66. The required particulars must be stated in request. See rule 67. Documents of title must be produced. See rule 68. Copies must be left at patent office. See rule 69.

A patent privilege is of a personal nature, and it is only by the insertion of the words in brackets [hereinafter, together with his executors, administrators, and assigns, or any of them, referred to as the said patentee] in the form of patent (see form D, schedule 1) that the patentee derives ^{Assignment.}

By deed. his power to alienate his rights. Unless there is some provision to the contrary, things that are created by deed can be assigned only by deed. For this reason the assignment of a patent ought to be by deed under hand and seal; but no particular form of words is required.

Form of agreement.

The method of assignment is by indenture reciting the names of the parties, the letters patent (the assignment of the patent to the vendor if he is not the original patentee), the testatum in consideration of purchase money, the habendum to the purchaser for the residue of the term, and containing covenants for title that the patent is valid, and that the vendor has a good right to assign, and will not do any act to affect the patent. If the whole interest is not assigned, care must be taken to exactly describe what part of the patent is assigned, for what place or places, and for how long. For the first time it has been permitted by *statute* to assign a patent for any particular place. Under the Act of 1852 a patent could be assigned for England, or Ireland, or Scotland, and not for any place therein. For the right to assign a part of an invention and the interest conveyed by the assignment, see *Dunnicliff v. Mallett*, 7 C. B. (N. S.) 209; *Walton v. Lavater*, 8 C. B. (N. S.) 162. Licensees are not bound to render an account separately to each assignee. It would be sufficient if an account were taken once for all in the presence of all parties interested. *Benjamin v. Macnatten*, 29 W. R. 890.

To any number of persons.

Formerly there was a condition that only five persons could have an interest in a patent, afterwards only twelve. This was remedied by 15 & 16 Vict. c. 83, s. 36, and as there is no condition in the present Act or patent form a patent may be assigned to any number of persons.

Covenant to assign.

A covenant to assign the patent on the happening of a given event will, in the happening of that event, operate as an assignment of the patent. *Cartwright v. Armatt*, 2 B. & P. 43.

Bankruptcy of patentee.

The interest of a patentee when bankrupt passes to his assignees in bankruptcy, without the necessity of any assignment. *Hesse v. Stevenson*, 3 B. & P. 565. *Bankruptcy Act*, 1883.

It will not be necessary to insert a clause in the assignment that the assignor should keep up the foreign patents, for the new Act (1883) does not provide that an English patent should become void on the lapse or expiry of a foreign patent for the same invention. See 15 & 16 Vict. c. 83, s. 25.

Foreign patents.

Neither the patentee nor the assignor of a patent is at liberty to dispute the validity of the patent. *Walton v. Lavater*, 8 C. B. (N. S.) 162. For the doctrine of estoppel as applicable to patents, see *Bowman v. Taylor* (2 A. & E. 278), *Hills v. Laming*, L. R. 9 Ex. 256. A purchaser or a licensee may set up the defence that the patent is bad, on the ground that it was obtained by fraud. *Hayne v. Maltby*, 3 T. R. 441; *Hall v. Conder*, 2 C. B. (N. S.) 22; *Laws v. Purser*, 6 E. & B. 930; *Pidding v. Franks*, 1 Mac. & G. 56.

Assignor estopped from disputing validity.

The assignment ought to be registered. See ss. 87 and 88.

Registration.

37. If a patent is lost or destroyed, or its non-production is accounted for to the satisfaction of the comptroller, the comptroller may at any time cause a duplicate thereof to be sealed.¹

Loss or destruction of patent.

[This section is substantially the same as the twenty-second section of 15 & 16 Vict. c. 83. The former practice was to present a petition, with an affidavit in support, to the Lord Chancellor, stating the facts connected with the loss or destruction.]

Patent Law Amendment Act, 1862.

¹ For form of application for duplicate letters patent, see the second schedule to these rules, form N, p. 235.

38. The law officers may examine witnesses on oath and administer oaths for that purpose under this part of this Act, and may from time to time make, alter, and rescind rules regulating references and appeals to the law officers and the practice and

Proceedings and costs for law officers.

procedure before them under this part of this Act; and in any proceeding before either of the law officers under this part of this Act, the law officer may order costs to be paid by either party, and any such order may be made a rule of the court.¹

Witnesses
on oath.

[This section for the first time gives power to the law officers of the Crown to examine witnesses on oath.

Costs of
comptroller.

Whether the law officer will order the costs of an appeal by the applicant to be paid by the comptroller if the application has been wrongfully refused, will have to be established by the practice.]

¹ For rules regulating the practice and procedure on appeals to the law officers, see page 211.

For form of appeal to law officers, see the second schedule to the rules, form T, page 240.

Exhibition
at industrial
or international
exhibitions
not to pre-
judice
patent
rights.

39. The exhibition of an invention at an industrial or international exhibition, certified as such by the Board of Trade, or the publication of any description of the invention during the period of the holding of the exhibition, or the use of the invention for the purpose of the exhibition in the place where the exhibition is held, or the use of the invention during the period of the holding of the exhibition by any person elsewhere, without the privity or consent of the inventor, shall not prejudice the right of the inventor or his legal personal representative to apply for and obtain provisional protection and a patent in respect of the invention, or the validity of any patent granted on the application, provided that both the following conditions are complied with, namely :

- (a.) The exhibitor must, before exhibiting the invention, give the comptroller the prescribed notice of his intention to do so;¹ and
- (b.) The application for a patent must be made before or within six months from the date of the opening of the exhibition.

¹ Notice of the intended exhibition of an unpatented invention must be given as prescribed in the second schedule to the rules, and contain a brief description of the invention, accompanied, if necessary, with drawings. See form O, page 236. A fee of ten shillings must be paid. See first schedule to rules, No. 31. Before sending this notice, a certificate must be obtained from the Board of Trade, that the exhibition is an international or industrial one. See rule 17, page 190.

This section replaces the 33 & 34 Vict. c. 27, intituled, "An Act for the Protection of Inventions exhibited at International Exhibitions in the United Kingdom." The changes introduced by this section are: that (1) the exhibition must be authorised by the Board of Trade; (2) the privilege is extended to the personal representatives of the inventor; (3) that the exhibitor must give to the comptroller the notice prescribed by the rules.

40. (1.) The comptroller shall cause to be issued periodically an illustrated journal of patented inventions, as well as reports of patent cases decided by courts of law, and any other information that the comptroller may deem generally useful or important.

Publication
of illus-
trated
journal, in-
dexes, etc.

(2.) Provisions shall be made by the comptroller for keeping on sale copies of such journal, and also of all complete specifications of patents for the

time being in force, with their accompanying drawings (if any).

(3.) The comptroller shall continue, in such form as he may deem expedient, the indexes and abridgments of specifications hitherto published, and shall from time to time prepare and publish such other indexes, abridgments of specifications, catalogues, and other works relating to inventions, as he may see fit.

Improve-
ment in
" Patents
Journal."

The improvements in the journal will consist principally in the two following particulars :—

1. The journal will be illustrated, as in America.
2. A portion of the journal will be devoted to the report of legal decisions.

It is not provided that copies of patents, which are not in force, will be kept on sale.

Patent
Museum.

41. The control and management of the existing Patent Museum and its contents shall, from and after the commencement of this Act, be transferred to and vested in the Department of Science and Art, subject to such directions as Her Majesty in Council may see fit to give.

Power to
require
model on
payment.

42. The Department of Science and Art may at any time require a patentee to furnish them with a model of his invention on payment to the patentee of the cost of the manufacture of the model; the amount to be settled, in case of dispute, by the Board of Trade.

43. (1.) A patent shall not prevent the use of an invention for the purposes of the navigation of a foreign vessel within the jurisdiction of any of Her Majesty's Courts in the United Kingdom or Isle of Man, or the use of an invention in a foreign vessel within that jurisdiction, provided it is not used therein for or in connection with the manufacture or preparation of anything intended to be sold in or exported from the United Kingdom or Isle of Man.

(2.) But this section shall not extend to vessels of any foreign state of which the laws authorise subjects of such foreign state, having patents or like privileges for the exclusive use or exercise of inventions within its territories, to prevent or interfere with the use of such inventions in British vessels while in the ports of such foreign state, or in the waters within the jurisdiction of its courts, where such inventions are not so used for the manufacture or preparation of anything intended to be sold in or exported from the territories of such foreign state.

A similar provision was provided for by s. 26 of the Patent Law Amendment Act, 1854, and was the result of a decision in the case of *Caldwell v. Vanvliissingen* (9 *Hare* 415), where an injunction was granted, restraining foreigners from using a screw propeller on board ships, within the dominions of the United Kingdom, without the license of the plaintiffs. See *Adair v. Young* (12 Ch. D. 13).

Assignment
to Secretary
for War of
certain
inventions.

44. (1.) The inventor of any improvement in instruments or munitions of war, his executors, administrators, or assigns (who are in this section comprised in the expression the inventor) may (either for or without valuable consideration) assign to Her Majesty's Principal Secretary of State for the War Department (hereinafter referred to as the Secretary of State), on behalf of Her Majesty, all the benefit of the invention, and of any patent obtained, or to be obtained, for the same; and the Secretary of State may be a party to the assignment.

(2.) The assignment shall effectually vest the benefit of the invention and patent in the Secretary of State for the time being on behalf of Her Majesty, and all covenants and agreements therein contained for keeping the invention secret and otherwise shall be valid and ineffectual (notwithstanding any want of valuable consideration), and may be enforced accordingly by the Secretary of State for the time being.

(3.) Where any such assignment has been made to the Secretary of State, he may at any time before the application for a patent for the invention, or before publication of the specification or specifications, certify to the comptroller his opinion that, in the interest of the public service, the particulars of the invention and of the manner in which it is to be performed should be kept secret.

(4.) If the Secretary of State so certifies, the application and specification or specifications with

the drawings (if any), and any amendment of the specification or specifications, and any copies of such documents and drawings, shall, instead of being left in the ordinary manner at the patent office, be delivered to the comptroller in a packet sealed by authority of the Secretary of State.

(5.) Such packet shall, until the expiration of the term or extended term during which a patent for the invention may be in force, be kept sealed by the comptroller, and shall not be opened save under the authority of an order of the Secretary of State, or of the law officers.

(6.) Such sealed packet shall be delivered at any time during the continuance of the patent to any person authorised by writing under the hand of the Secretary of State to receive the same, and shall, if returned to the comptroller, be again kept sealed by him.

(7.) On the expiration of the term or extended term of the patent, such sealed packet shall be delivered to any person authorised by writing under the hand of the Secretary of State to receive it.

(8.) Where the Secretary of State certifies as aforesaid, after an application for a patent has been left at the patent office, but before the publication of the specification or specifications, the application specification or specifications, with the drawings (if any), shall be forthwith placed in a packet sealed by authority of the comptroller, and such packet

shall be subject to the foregoing provisions respecting a packet sealed by authority of the Secretary of State.

(9.) No proceeding by petition or otherwise shall lie for revocation of a patent granted for an invention in relation to which the Secretary of State has certified as aforesaid.

(10.) No copy of any specification or other document or drawing, by this section required to be placed in a sealed packet, shall in any manner whatever be published or open to the inspection of the public, but save as in this section otherwise directed, the provisions of this part of this Act shall apply in respect of any such invention and patent as aforesaid.

(11.) The Secretary of State may, at any time by writing under his hand, waive the benefit of this section with respect to any particular invention, and the specifications, documents, and drawings shall be thenceforth kept and dealt with in the ordinary way.

(12.) The communication of any invention for any improvement in instruments or munitions of war to the Secretary of State, or to any person or persons authorised by him to investigate the same or the merits thereof, shall not, nor shall anything done for the purposes of the investigation, be deemed use or publication of such invention so as to prejudice the grant or validity of any patent for the same.

See notes to s. 27, and form of patent, form D, schedule 1; *Dixon v. Feather v. The Queen* (6 B. & S. 257); *Dixon v. The Small Arms Company*. *Small Arms Company (Limited)*, (L. R. 1 App. Cas. 641), reversing the Court of Appeal (1 Q. B. D. 384), and affirming the decision of the Queen's Bench division (L. R. 10 Q. B. 130).

The provisions of this section are substantially the same as those contained in 22 Vict. c. 13 (repealed), intituled, "An Act to Amend the Law concerning Patents for Inventions, with respect to Inventions for Improvements in Instruments and Munitions of War."

Existing Patents.

45. (1.) The provisions of this Act relating to applications for patents and proceedings thereon shall have effect in respect only of applications made after the commencement of this Act (a). Provisions respecting existing patents.

(2.) Every patent granted before the commencement of this Act, or on an application then pending, shall remain unaffected by the provisions of this Act relating to patents binding the Crown, and to compulsory licenses.

(3.) In all other respects (including the amount and time of payment of fees) this Act shall extend to all patents granted before the commencement of this Act (b), or on applications then pending, in substitution for such enactments as would have applied thereto if this Act had not been passed (c).

(4.) All instruments relating to patents granted before the commencement of this Act required to be left or filed in the Great Seal Patent Office shall

be deemed to be so left or filed if left or filed before or after the commencement of this Act in the patent office.

(a) It does not appear quite clear by the words in subs. 1 & 3 of the above section whether the fees on applications pending on the 1st of January, 1884, are to be governed by the new schedule of fees or by the old. By sub. 1 it seems to have been intended that these fees should follow the old scale, but it is not so expressly stated, unless the payment of fees is a "proceeding." The words in brackets in sub. 3, "including the amount and payment of fees," seem to point to a contrary intention. The following explanation has been given by a well-known firm of patent agents :

"We have very carefully considered this section, and believe that the intention is as follows—viz., that applications made but not completed before January 1st, 1884, will be dealt with—so far as the various steps and payments necessary for obtaining the patents and filing the specifications are concerned—according to the law in force up to that date, and therefore not according to the new law; but that such patents, when obtained, and when the specifications have been filed, will be subject to all the provisions of the new law, excepting those relating to a patent binding the Crown, and to compulsory licenses; moreover, that the provisions of the new law will also apply to all unexpired patents actually granted prior to January 1st, 1884, with the two exceptions above named, and one other mentioned in the following paragraph [The exception here referred to is mentioned in the second schedule to Act. See page 177] in substitution for such enactments as would have applied thereto if the new Act had not been passed." Notes on the Patents, Designs, and Trade Marks Act, 1883, by Messrs. Haseltine, Lake, & Co.

(b) All proceedings for amendment, prolongation, and revocation provided by this Act will apply to patents granted or applied for before the 1st January, 1884.

Amend-
ment, pro-
longation,
revocation.

(c) See repeal and saving for past operation of repealed enactments, s. 113.

Saving for
past opera-
tion of
repealed
enactments.

Definitions.

46. In and for the purposes of this Act—

“Patent” means letters patent for an invention :

Definitions
of “patent,”
“patentee,”
and “in-
vention.”

“Patentee” means the person for the time being entitled to the benefit of a patent :

“Invention” means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies (that is, the Act of the twenty-first year of the reign of King James the First, chapter three, intituled “An Act concerning Monopolies and Dispensations with Penal Laws and the Forfeiture thereof”) (a), and includes an alleged invention.

In Scotland “injunction” means “interdict.”

(a) This Act only repeals the Statute of Monopolies in part namely, sections ten, eleven and twelve, which are not important, and refer to letters patent granted for making gunpowder, alum, &c. See third schedule to Act. The most important section is section six, which is the foundation of the present patent law as far as positive enactment is concerned, for it must be remembered that the Statute of Monopolies was only declaratory of the common law existing at that time.

Statute
of Monopo-
lies.

“Provided also, and be it declared and enacted that any declaration before mentioned shall not extend to any letters patent and grants of privilege for the term of fourteen years or under, hereafter to be made for the

Section six.

sole working or making of any manner of new manufactures within this realm, to the true and first inventor or inventors of such manufactures, which others at the time of making such letters patent and grants shall not use, so as they shall not be contrary to law, nor mischievous to the state, by raising prices of commodities at home, or hurt of trade, or generally inconvenient. The said fourteen years to be accounted from the date of the first letters patents or grant of such privilege hereafter to be made, *but that the same shall be of such force as they should be if this Act had never been made and of none other.*"

Inreferring to this section Coke says (3 Inst. c. 85, pp. 181, 184): "The second proviso" (the first proviso being section five, which refers to patents granted before the passing of the statute) "concerns the privilege of new manufactures hereafter to be granted, and this must also have seven properties:

1. It must be for the term of fourteen years or under,
2. It must be granted to the first and true inventor.
3. It must be of such manufactures which any others at the time of the making of such letters patent did not use, for albeit it were newly invented, yet if any other did use it at the making of the letters patent or grant of privilege, it is declared and enacted to be void by this Act.
4. The privilege must not be contrary to law; such a privilege as is consonant to law must be substantially and essentially newly invented, but if the substance was *in esse* before and a new addition thereunto, though that addition make the former more probable, yet it is not a new manufacture in law, and so it was resolved in the Exchequer Chamber Pasch. 15 Eliz. in Bircot's Case for a privilege concerning the preparing and melting &c. of lead ore; for there it was said that is to put a new button to an old coat, and it is much easier to add than invent. And there it was also resolved that if the new manufacture be substantially

invented according to law, yet no old manufacture in use before can be prohibited.

5. Nor mischievous to the State by raising of prices of commodities at home. In every such new manufacture that deserves a privilege there must be *urgens necessitas* and *evidens utilitas* (at present a small amount of utility is sufficient).

6. Nor to hurt of trade. This is very material and evident.

7. Nor generally inconvenient."

Bircot's Case is not now law, having been again and again expressly overruled; therefore, the above remarks as to additions in number four above do not now apply. The gist of four, five, six, and seven, are expressed in the form of letters patent in the first schedule to the Act, form D. "Provided that these our letters patent are on this condition, that if at any time during the said term, it be made to appear to us, our heirs, or successors, or any six or more of our Privy Council, that this our grant is contrary to law or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof within our United Kingdom of Great Britain and Ireland and the Isle of Man, or that the said patentee is not the first and true inventor thereof within the realm as aforesaid, these, our letters patent, shall forthwith determine and be void to all intents and purposes, notwithstanding anything hereinbefore contained."

PART III.

DESIGNS.

Registration of Designs.

47. (1.) The comptroller may, on¹ application (c) Application for registration of designs. by or on behalf of any person claiming to be the proprietor (a) of any new or original (d) design (b)

not previously published in the United Kingdom, register the design under this part of this Act.

(2.) The application¹ must be made in the form set forth in the first schedule to this Act, or in such other form as may be from time to time prescribed, and must be left at, or sent by post to,² the patent office in the prescribed manner (c).

(3.) The application must contain a statement of the nature³ of the design (e), and the class or classes of goods⁴ in which the applicant desires that the design be registered (f).

(4.) The same design may be registered in more than one class.

(5.) In case of doubt as to the class in which a design ought to be registered, the comptroller may decide the question.⁵

(6.) The comptroller may,⁵ if he thinks fit, refuse to register any design presented to him for registration,⁶ but any person aggrieved by any such refusal may appeal therefrom to the Board of Trade.⁷

(7.) The Board of Trade shall, if required, hear the applicant and the comptroller, and may make an order determining whether, and subject to what conditions (if any), registration is to be permitted.⁸

Form of
application.

¹ By the designs rules the application for the registration of a design must be made in the form E, in the second schedule thereof. See page 256. And the size of the papers, etc., must be of the dimensions required by rule 8, unless the comptroller in any particular case may vary the requirements of the rule. See page 243. Ap-

plications must be signed by applicants (see rule 8, page 243); or by agent of applicant (see rule 6, page 242).

² For rule as to applications sent by post, see rule 12, Post. page 244.

³ In describing the nature of the design the applicant must state whether it is applicable for the pattern or for the shape or configuration of the design, and the means by which it is applicable. See rule 9, page 243. Nature of design.

⁴ For purposes of the registration of designs and of the rules, goods are classified in the manner appearing in the third schedule to these rules, see page 255. Classification of goods.

⁵ The decision or determination of the comptroller in the exercise of these discretionary powers must be notified to the applicant. See rule 15. Notification of decision.

⁶ For rules as to hearing by comptroller, and notice required to be given, see rules 13-15. Hearing by comptroller.

⁷ Notice of appeal to the Board of Trade upon the decision of the comptroller must be left at the patent office (designs branch), within a month of the date of the decision appealed against, and must be in the form F in the second schedule to the rules (see page 257), and be accompanied with a statement of the case written upon foolscap paper (on one side only), with a margin of two inches on the left-hand side. A copy must also be sent to the Secretary of the Board of Trade, No. 7, Whitehall Gardens, London. Notice of appeal and statement of case.

⁸ For rules as to appeal to and hearing by the Board of Trade, see rules 16-20, pp. 245, 246. Rules as to hearing of appeal.

(a) For definition of "proprietor," see s. 61.

Proprietors.

(b) For definition of "design," see s. 60.

Design.

(c) Application may be sent by a prepaid letter through the post, and if so sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post. In proving such sending it shall be sufficient to prove that the letter was properly addressed and put into the post. Application may be sent by post.

New and original combination of old designs.

(d) Combinations of old designs may be new and original. In the case of *Harrison and another v. Taylor*, 3 H. & N. 301, the plaintiffs registered under 5 & 6 Vict. c. 100, a design for ornamenting woven fabrics. The design was applied to a fabric woven in cells, called the honeycomb pattern, and consisted of a combination of the large and small honeycomb, so as to form a large honeycomb stripe on a small honeycomb ground. The large honeycomb was not new, and the small honeycomb was not new, but they had never been used in combination before the plaintiffs registered their design. Other fabrics had been woven with a similar combination of large and small pattern. The defendants having infringed the plaintiff's copyright an action was brought against them by the plaintiffs, and it was held that the design was not new and original within the meaning of 5 & 6 Vict. c. 100. This decision was, however, reversed on appeal, on the ground that it was a question for the jury, who had found that the design was new and original, and that they were warranted in so doing. In giving judgment in this case, Chief Justice Cockburn pointed out that the "5 & 6 Vict. c. 100 (the same words, 'new and original design,' are retained in the above section) applies to matters adapted to the ornamentation of any article of manufacture; but the Court of Exchequer seems to have dealt with the subject upon the assumption that there was an analogy between copyright in a design and a patent for an invention. This is a question to be determined by the eye. Is it a design in the sense of a drawing? That is a question for a jury. It is true that in this case the design consists in using the honeycomb pattern alternately in small and large proportions, and I agree that it would not have been competent for the plaintiff to register this design as against a person having a copyright in the honeycomb pattern; but no person has a copyright, and as the matter is simply one in which the public at large are interested, there is nothing to prevent the plaintiff from taking the original pattern,

and varying it to a certain extent, and registering the whole as a new design. That leads to the question—Is it in its present shape—viz., the combination of large and small patterns—a new design? That is a matter of which anybody may satisfy himself by looking at it. There is a new combination, which is, in substance, a new design.” (29 L. J. Ex. 3). See also *The Queen v. Firmin*, 15th Vol. Justice of the Peace. A combination, to be protected, must be one design, and not a multiplicity of designs. *Norton v. Nicholls*, 28 L. J. Q. B. 225.

A design consisting of six pointed stars on an Albert chain, arranged in a particular manner, and shaded, can be protected as a combination, although each part is old. *Holdsworth v. M'Crea*, L. R. 2 H. L. 380.

The subject of registration is a design, and not the article to which it is applied. *Norton v. Nicholls*, 28 L. J. Q. B. 225. Where there were four old designs respectively applied to three ribbons and a button, and the three ribbons were then united by the button so as to form a badge, which was registered under the Act, Vice-Chancellor Wood held that the union did not amount to a new design within the statute, and an injunction to restrain the manufacture and sale of a similar combination was refused. *Mulloney v. Stevens*, 10 L. T. (N. S.) 190.

The plaintiff registered, under 5 & 6 Vict. c. 100, a design consisting of a double card-basket, formed of a combination of two baskets, admitted to be separately old in design. The plaintiffs were not the designers, but had contracted to purchase the articles in Germany, and imported them to England. Held, upon motion for an injunction to restrain the sale of an imitation basket, that the articles were not *new and original* within the meaning of the Act, and that the plaintiffs, not being the designers, and not having purchased the design for value, were not entitled to the protection of the statute. *Lazarus v. Charles*, L. R. 16 Eq. 117.

Portraits of well-known characters not new and original designs.

The portrait of a well-known public character, copied from a photograph and applied as a design upon earthenware, is not a *new and original* design within the meaning of the Copyright of Designs Act. *Adams v. Clemerton*, 12 Ch. D. 715.

Statement of the nature of the design.

(e) Although the same nicety is not required in registering patterns or designs as in describing inventions sought to be protected under the patent laws (*Holdsworth v. M'Crea*, L. R. 2 H. L. 380), yet sub. 3 requires that the application must contain a statement of the nature of the design. In many cases, before the operation of this Act, the attaching to the application of a portion of the article itself to which the design had been applied, without any document specifying the precise extent of their claim, was held a sufficient description; in other cases it was held that a written description was required. The judgment of Lord Colonsay, in the above-mentioned case, clearly defines the old practice:

"The party has a choice of two courses to pursue; one, to content himself with giving in a pattern and remaining silent; the other, giving a description of what he claims as his invention. There is risk either way. There is a risk, in the latter case, of there being a misdescription of his claim. That is a question which is frequently raised under the Patent Acts; because there a description is required, and in many patents it would be impossible to proceed without a description. . . . Then, again, where a party exercises the option of silence, and merely produces the pattern of his invention, he is exposed to this: that in order to claim his protection, he requires to maintain that he claims to maintain the entirety of what is exhibited on the face of that pattern; and if only a part is used in a different combination, he is without the protection he otherwise would have had. But it is his own fault if he has not that protection. He has chosen to run that risk, and if, in doing so, he has exposed himself to the chance of another party outdoing him in the market, by adopting part of his invention, or

putting it in a different combination, that is his own fault, his own defect in his procedure."

Although the above remarks are not to their full extent applicable under the new Act, because the application must contain a statement of the nature of the design, yet, if there is not a sufficient description of the parts, or there is silence with regard to any of the parts to that extent, they are quite in point.

(f) If the design be registered under a wrong class, that will not justify a piracy. *Lowndes v. Browne*, 12 Ir. L. R. 293.

48. (1.) On application for registration of a design the applicant shall furnish to the comptroller the prescribed number of copies (a) of drawings, photographs, or tracings, of the design sufficient, in the opinion of the comptroller, for enabling him to identify the design;¹ or the applicant may, instead of such copies, furnish exact representations or specimens of the design.²

Drawings, &c., to be furnished on application.

(2.) The comptroller may, if he thinks fit, refuse any drawing, photograph, tracing, representation, or specimen, which is not, in his opinion, suitable for the official records.³

¹ Three exactly similar drawings, photographs, or tracings of the design. See rule 9, page 243. Drawings must be on strong foolscap paper (on one side only), of the size of thirteen inches by eight, with a margin of not less than one and a half inches on the left hand part thereof, and the signature of the applicant, or his agent, must be written in a large and legible hand. See rule 8, page 243.

² When the articles, to which designs are applied, are not of a kind which can be pasted into books, drawings, photographs, or tracings of such designs must be furnished.

If exact representations unsuitable, drawings must be sent.

Refusal by
comptroller.

³ Before exercising this discretionary power, the comptroller must hear the applicant or his agent, and give ten days' notice of the time on which such hearing shall take place. See rules 13-15, page 245.

(a) If copies of drawings, &c., are furnished on application, and not exact representations, these latter must be furnished to the comptroller before the delivery on sale of any articles, or he may erase the applicant's name from the register. See rule 50, page 202.

Certificate
of registra-
tion.

49. (1.) The comptroller shall grant a certificate of registration¹ to the proprietor (a) of the design when registered.

(2.) The comptroller may, in case of loss of the original certificate,² or in any other case in which he deems it expedient, grant a copy or copies of the certificate.

Form of
certificate.

¹ For form of certificate of registration, see form G, second schedule, page 258. Form to be sent to applicant, and sealed with the seal of the patent office. See rule 11, page 244.

Copy of
certificate.

² For form of application for a copy of a certificate of registration of a design, see form H, second schedule, page 258.

Proprietor.

(a) For definition of "proprietor," see s. 61.

Copyright in Registered Designs.

Copyright
of registra-
tion.

50. (1.) When a design is registered, the registered proprietor (a) of the design shall, subject to the provisions of this Act, have copyright in the design during five years from the date of registration.¹

(2.) Before delivery on sale of any articles to

which a registered design has been applied, the proprietor must (if exact representations or specimens were not furnished on the application for registration) (b), furnish to the comptroller the prescribed number of exact representations or specimens of the design; and if he fails to do so, the comptroller may erase his name from the register, and thereupon his copyright in the design shall cease.²

¹ The date of registration is the date upon which the application for registration was received by the comptroller. See rule 21, page 246.

² Before exercising a discretionary power the comptroller must hear the applicant. For provisions as to hearing, see rules 13-15, page 245.

(a) Under the former Act the word "sole" was inserted before "proprietor," but, as pointed out by the late Master of the Rolls, this was inconsistent with the definition of the word "proprietor." *Jewitt v. Eckhardt*, 8 Ch. D. 409.

(b) See s. 48, notes 1 and 2.

51. Before delivery on sale of any articles to which a registered design has been applied, the proprietor of the design shall cause each such article to be marked with the prescribed mark,¹ or with the prescribed word or words or figures, denoting that the design is registered; and if he fails to do so, the copyright in the design shall cease, unless the proprietor shows that he took all proper steps to ensure the marking of the article (a).

¹ The prescribed mark for classes 1-12 in the third schedule (see page 255) is the abbreviation "Rd.," and the

Marking
registered
designs.

Prescribed
mark.

number appearing on the certificate of registration, and for classes 13 and 14 "Regd." without any number. See rule 32, page 250.

Registered designs must be marked even if articles are for export.

(a) The proprietor of a design duly registered, whether he is a British subject or a foreigner, forfeits the benefit of the Act, unless the proper registration marks are attached to all articles and substances to which the design is applied, whether the same are sold abroad or in the British dominions. *Sarazin v. Hamel*, 9 Jur. (N. S.) 192; 32 L. J. Ch. 380.

If a defendant insists that a plaintiff has lost his copyright by non-compliance in respect of matters subsequently to registration, he must raise the defence on the pleadings. *Sarazin v. Hamel*, 9 Jur. (N. S.) 192; 32 L. J. Ch. 383.

When designs are published in book.

The copies of a registered design published in a book for sale need not have any registered mark attached to them. *Riego de la Branchardiere v. Elvery*, 18 L. J. Ex. 381. When the designs are bound and published in a book, see *Maple & Co. v. Junior Army and Navy Stores*, 21 Ch. D. 369.

Pattern-pieces of paper.

The proprietor of a design applied to paper-hangings, registered according to the provisions of 5 & 6 Vict. c. 100, published pattern-pieces containing the whole design not bearing the letters "Rd." and the proper number as prescribed by s. 4 [the ordinary practice in the trade was to sell hangings in larger pieces, but to mark patterns such as those which were published] was held not to be protected by the Act against parties copying the design from such pattern-pieces and publishing articles with such design applied to them. *Heywood v. Potter*, 1 E. & B. 439.

Inspection of registered design.

52. (1.) During the existence of copyright in a design, the design shall not be open to inspection except by the proprietor, or a person authorised in writing by the proprietor, or a person authorised by the comptroller or by the court, and furnishing such information as may enable the comptroller to

identify the design, nor except in the presence of the comptroller, or of an officer acting under him, nor except on payment of the prescribed fee; and the person making the inspection shall not be entitled to take any copy of the design, or of any part thereof.¹

(2.) When the copyright in a design has ceased, the design shall be open to inspection, and copies thereof may be taken by any person on payment of the prescribed fee.²

¹ The comptroller may, on receipt of the prescribed fee (five shillings), make searches among the designs registered at the patent office after the commencement of this Act, and inform any person requesting him so to do whether a particular design produced by such person, and to be applied to goods in any particular class, is or is not identical with, or an obvious imitation of, any design applied to such goods and registered since the commencement of the Act. See rule 35, page 251.

² On such days and during such hours as the comptroller shall from time to time determine, any person paying the prescribed fee (one shilling for each quarter of an hour) may, on production of the number of any design of which the copyright has ceased, inspect such design, and any person paying the prescribed fee (see first schedule, fee No. 10) may take a copy or copies of such design. See rule 33, page 251.

53. On the request of any person producing a particular design, together with its mark of registration, or producing only its mark of registration, or furnishing such information as may enable the comptroller to identify the design, Information as to existence of copyright.

and on payment of the prescribed fee,¹ it shall be the duty of the comptroller to inform such person whether the registration still exists in respect of such design, and if so, in respect of what class or classes of goods, and stating also the date of registration, and the name and address of the registered proprietor.²

¹ The prescribed fee is five shillings. See first schedule, fee No. 12, page 253.

² For the rule as to searches on production of sketch of design, see rule 35, page 251.

Cesser of
copyright in
certain
events.

54. If a registered design is used in manufacture in any foreign country and is not used in this country within six months of its registration in this country, the copyright in the design shall cease.

Register of Designs.

Register of
designs.

55. (1.) There shall be kept at the patent office a book called the Register of Designs,¹ wherein shall be entered the names and addresses of proprietors² of registered designs (a), notifications of assignments and of transmissions of registered designs (b), and such other matters as may from time to time be prescribed.

(2.) The register of designs shall be *primâ facie* evidence of any matters by this Act directed or authorised to be entered therein.

Registration
of
original
proprietor.

¹ Comptroller shall cause design to be entered on register, and the date of registration shall be as that of the application. See rule 21, page 246.

³ For provisions as to registration of subsequent proprietors, see rules 22-27. Registration of subsequent proprietor.

The fee for the registration of a subsequent proprietor is the same as that of the original. See first schedule, page 253.

For form of request to enter name of subsequent proprietor of design, with declaration in support thereof, see form K, second schedule to designs rules, page 261.

(a) Trusts not be entered in registers, see s. 85.

Trusts.
Assignments.

(b) For entry of assignments and transmissions in registers, see s. 87. An assignment of a design must be in writing. In commenting on the 5 and 6 Vict. c. 100, in the case of *Jewitt v. Eckhardt*, Jessel (M. R.) said: "Now I come to another question, and I must say that the point is not as clear upon the Act of Parliament as I could wish. This Act of Parliament requires the assignment of a copyright in a design to be in writing. We must recollect that this right is a statutory right—it is created by this statute. Of course, the statute which creates it may also point out how it is to be assigned or dealt with. It seems to me on the fair construction of the Act of Parliament, although I admit it is very obscure—and, as I have often said in these matters with regard to these obscure instruments, whether they are Acts of Parliament or Wills, opinions may differ—that the assignment license must be in writing" (8 Ch. D. 409); *Leyland v. Stewart*, 4 Ch. D. 419.

Fees.

56. There shall be paid in respect of applications and registration and other matters under this part of this Act such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade; and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury shall from time to time direct.¹ Fees on registration, etc.

¹ For list of fees, see first schedule to the designs rules, page 253.

Industrial and International Exhibitions.

Exhibition
at industrial
or inter-
national
exhibition
not to pre-
vent or
invalidate
registra-
tion.

57. The exhibition at an industrial or international exhibition, certified as such by the Board of Trade, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design, shall not prevent the design from being registered, or invalidate the registration thereof, provided that both the following conditions are complied with; namely—

- (a.) The exhibitor must, before exhibiting the design or article, or publishing a description of the design, give the comptroller the prescribed notice of his intention to do so;¹ and
- (b.) The application for registration must be made before or within six months from the date of the opening of the exhibition.

Notice of
intention to
exhibit.

¹ An applicant must first obtain a certificate from the Board of Trade that the exhibition is an industrial or an international one (see rule 36, page 251), and then give to the comptroller seven days' notice in writing of his intention to exhibit his design. For form of notice of intended exhibition of an unregistered design, see form L, second schedule, page 262. A brief description of the nature of the design, accompanied by a sketch or drawing, must be sent with the notice.

*Legal Proceedings.*¹

58. During the existence of copyright in any design—

- (a.) It shall not be lawful for any person without the license or written consent of the registered proprietor to apply such design or any fraudulent or obvious imitations thereof (a), in the class or classes of goods in which such design is registered, for purposes of sale to any article of manufacture or to any substance artificial or natural or partly artificial and partly natural ; and
- (b.) It shall not be lawful for any person to publish or expose for sale any article of manufacture or any substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, knowing that the same has been so applied without the consent of the registered proprietor.

Any person who acts in contravention of this section shall be liable for every offence to forfeit a sum not exceeding fifty pounds to the registered proprietor of the design, who may recover such sum as a simple contract debt by action in any court of competent jurisdiction.

¹ When a certificate is required for the purpose of any legal proceeding, on the payment of the prescribed fee (five shillings), the comptroller will grant one which shall specify on the face of it the purpose for which it was

Penalty on piracy of registered designs.

Certificate in legal proceedings.

requested. For form of request, see form L; and for form of certificate, see form I, second schedule, page 259..

Obvious
imitation.

(a) When a pattern of an article has been registered, the design will be infringed by an article to all appearance the same, though not actually identical. *M'Crea v. Holdsworth*, L. R. 6 Ch. 418; and see notes to s. 47.

Clarke v.
Harcourt.

In the case of *Clarke v. Harcourt* (W. N. 1881, page 85), the plaintiffs, who were brass founders, had registered, under the Act 5 & 6 Vict. c. 100, s. 1, class 1, a design applicable to the ornamenting of drop-down handles, and they claimed an injunction to restrain the defendants, who were also brass founders, from applying the said design, or any fraudulent imitation thereof, for the purpose of sale, to any articles manufactured by them. The defence was that the plaintiffs' design was not new or original, and that it had no reference to any purpose of ornamentation for which a design could be lawfully registered, and that the defendants had not applied such design, or any imitation thereof, to articles sold by them. Held per Justice Kay, that this was a case of registration of a design for ornament applied to an article, and not a case of utility, and the only question was whether the entire design had been fraudulently imitated in respect of the back-plate, standards, cross-bar, and drop. He felt justified, from the evidence of the witnesses, as well as his own eyesight, in coming to the conclusion that the two designs were entirely different.

Action for
damages.

59. Notwithstanding the remedy given by this Act for the recovery of such penalty as aforesaid, the registered proprietor of any design may (if he elects to do so) bring an action for the recovery of any damages arising from the application of any such design, or of any fraudulent or obvious imitation thereof for the purpose of sale, to any article of manufacture or substance, or from the

publication, sale, or exposure for sale by any person of any article or substance to which such design or any fraudulent or obvious imitation thereof shall have been so applied, such person knowing that the proprietor had not given his consent to such application.

See s. 58, and notes.

The questions of novelty and infringement were until the passing of this Act questions for the jury; but it was for the court, looking at the article registered without the aid of a jury, to say whether the registration was sufficient.

Definitions.

60. In and for the purposes of this Act—

“Design” means any design applicable to any article of manufacture, or to any substance artificial or natural, or partly artificial and partly natural, whether the design is applicable for the pattern, or for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidering, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined, not being a design for a sculpture, or other thing within the protection of the Sculpture Copyright Act of the year 1814. 54 Geo. III., c. 56.

Definition of
“design,”
“copy-
right.”

“Copyright” means the exclusive right to apply a design to any article of manufacture or to any

such substance as aforesaid in the class or classes¹ in which the design is registered.

¹ For classification of articles of manufacture and substances, see third schedule to designs rules, page 255.

Definition
of "pro-
priator."

61. The author of any new and original design shall be considered the proprietor thereof (a), unless he executed the work on behalf of another person for a good or valuable consideration, in which case such person shall be considered the proprietor,¹ and every person acquiring for a good or valuable consideration a new and original design, or the right to apply the same to any such article or substance as aforesaid, either exclusively of any other person or otherwise, and also every person on whom the property in such design or such right to the application thereof shall devolve, shall be considered the proprietor of the design in the respect in which the same may have been so acquired, and to that extent, but not otherwise.

¹ For rules as to the registration of subsequent proprietors, see ss. 22-27.

(a) It is manifest by the above definition that there may be many proprietors of the same design. If the original proprietor did not grant an assignment or a license to use his invention, he would be the sole proprietor, but when he does he immediately becomes not the sole proprietor, but a proprietor, for the grantees become equally proprietors with him. See the remarks on this point by the late Master of the Rolls in the case of *Jewitt v. Eckhardt*, 8 Ch. D. 409.

PART IV.

TRADE MARKS.

Registration of Trade Marks.

62. (1.) The Comptroller (*a*) may, on application, ^{Application for registration.} by or on behalf of any person (*b*) claiming to be the proprietor of a trade mark,¹ register⁶ the trade mark (*c*).

(2.) The application must be made in the form set forth in the first schedule to this Act,² or in such other form as may be from time to time prescribed (*d*), and must be left at, or sent by post to,³ the Patent Office in the prescribed (*e*) manner (*f*).

(3.) The application must be accompanied by the prescribed number of representations (*g*) of the trade mark,⁴ and must state the particular goods or classes of goods (*h*) in connection with which the applicant desires the trade mark to be registered.⁵

(4.) The Comptroller may, if he thinks fit, refuse to register a trade mark, but any such refusal shall be subject to appeal to the Board of Trade,⁷ who shall, if required, hear the applicant and the Comptroller, and may make an order determining whether, and subject to what conditions (if any) registration is to be permitted.⁶

(5.) The Board of Trade⁷ may, however, if it appears expedient, refer the appeal to the Court (*i*);

and in that event the Court shall have jurisdiction to hear and determine the appeal and may make such order⁸ as aforesaid (j).

Application of firms or bodies corporate. ¹ If the application is made by a firm, it may be signed by one or more members of the firm ; or if by a body corporate, by the secretary or principal officer of the body corporate. See rule 7, page 266.

Agent. The application, or any other communication between the applicant and the comptroller, may be made by or through an agent, duly authorised to the satisfaction of the comptroller.

If mark used before 13th August, 1875. If the application is made to register a trade mark used before the 13th August, 1875, it must contain a statement of time during which, and of the person by whom it has been used. See rule 10, page 267.

Form of application. ² The form F, in the first schedule to the Act, has been altered and amended by the Trade Marks Rules, and the form F, in the second schedule to the rules, page 290, must be used in substitution thereof. See rule 4, page 265.

Foreign characters. If the mark includes words of foreign character, a translation must be given. See rule 15, page 269.

Notices. ³ For mode of sending notices, see rule 16, page 269.

Representations. ⁴ Three representations are required, except in classes 23 to 25 inclusive, where four are required. They must be supplied upon paper of the size stipulated in rule 11, page 267, and must be of a durable nature. One must be affixed to the application ; the others must be upon separate half sheets. In the case of trade marks exceeding the limits of the foolscap paper of the size mentioned in rule 11, page 267, such marks may be pasted on separate sheets of foolscap, or in such form as the comptroller may think most convenient. In exceptional cases, if the trade mark cannot conveniently be shown by a representation, a specimen or copy of the trade mark can be deposited at the patent office, and a reference thereto made in the register.

Classification of goods. ⁵ For the purpose of registration, a classification of goods is given in the third schedule to the trade marks rules.

See page.308. The comptroller determines, in case of doubt, to which class any particular description of goods belongs. See rule 6, page 266. When the application is for the registration of a trade mark on any metal goods other than cutlery, edge tools, and raw steel, the applicant must state of what metal or metals the goods are made. See rule 12, page 267.

⁶ Before adversely exercising this discretionary power, the comptroller must give notice to the applicant. For provisions as to notice by the comptroller and notice of applicant's wish to be heard, see rules 17-19, page 270. Discretionary power of comptroller.

The time fixed by the rules for the registration of trade marks is as soon as may be after the expiration of two months from the date of the first advertisement of the application. See rule 30, page 274. The date of the trade mark is the date on which the application for registration was received by the comptroller. See rule 32, page 275. Time and date of registration.

Notice of registration and of the advertisement in the official paper is sent by the comptroller to the applicant. See rule 33, page 275. Notice.

⁷ The notice of appeal must be left at the patent office within one month of the decision appealed against, and must be accompanied by a statement of the grounds of appeal, and a copy thereof must be sent to the Secretary of the Board of Trade, No. 7, Whitehall Gardens, London. The Board of Trade have full power either to hear or to refer to the court ; but if they decide to hear, they will give notice of the time and place of hearing to the comptroller and the applicant, and give such directions as to evidence and otherwise as they may think fit. See rules 20-24, pp. 270, 271. Appeal to Board of Trade.

For form of appeal to Board of Trade on refusal of comptroller to register a trade mark, see form H, second schedule, page 292. Form.

⁸ The person in whose favour the order is made must leave at the patent office a copy of the order. See rule 44, page 278. Order.

(a) The comptroller-general of patents, designs, and trade marks is substituted for the registrar. 38 & 39 Vict. c. 91, rule 5 repealed.

(b) "Person" includes a body corporate.

(c) For definition of trade mark, see s. 64 and note.

(d) For form of application, see form F, schedule 1, page 176; but see note 2, page 114.

(e) Prescribed by the general rules under or within the meaning of this Act. Sub. 2 of s. 101 provides: that any of the forms in the first schedule to this Act may be altered or amended by rules made by the Board of Trade from time to time.

(f) For provision as to leaving documents, or sending them by post, see ss. 97 & 98.

(g) Form F, first schedule to Act, page 176, with the directions printed in the form, have been replaced by the rules. See note 4, above.

(h) For the classes of goods, see page 308; and as to power of Board of Trade, see s. 101, sub. 1 (b).

Court.

(i) The court means (subject to the provisions for Scotland, Ireland, and the Isle of Man) Her Majesty's High Court of Justice. See s. 117, sub. 1.

(j) The court has no jurisdiction to order costs of proceedings before the registrar to be paid; its jurisdiction only affects proceedings in the High Court. In *re Brandreth's Trade Mark*, 9 Ch. D. 618; In *re Rotherham's Trade Marks*, 11 Ch. D. 250.

Limit of
time for
proceeding
with appli-
cation.

63. Where registration of a trade mark has not been or shall not be completed within twelve months¹ from the date of the application, by reason of default on the part of the applicant, the application shall be deemed to be abandoned.²

Enlarge-
ment of
time by
comp-
troller.

¹ For time of registration of trade marks, see rule 30, page 274. The comptroller may enlarge the time for doing any act, or taking any proceeding prescribed by the rules. See rule 52, page 282.

² Where applicant dies before registration, the trade mark may be registered in the name of the person to whom the goodwill of the business has been transmitted, if such ownership is proved to the satisfaction of the comptroller. See rule 31, page 275. Death of applicant.

64. (1.) For the purpose of this Act, a trade mark must consist of or contain at least one of the following essential (a) particulars : Conditions of registration of trade mark.

- (a.) A name of an individual or firm printed, impressed, or woven in some particular and distinctive manner ; or
 - (b.) A written signature or copy of a written signature of the individual or firm applying for registration thereof as a trade mark ; or
 - (c.) A distinctive device, mark, brand, heading, label, ticket, or fancy word or words not in common use.
- (2.) There may be added to any one or more of these particulars any letters, words, or figures, or combination of letters, words, or figures, or of any of them (b).
- (3.) Provided that any special and distinctive word or words, letter, figure, or combination of letters or figures, or of letters and figures used as a trade mark before the thirteenth day of August one thousand eight hundred and seventy-five, may be registered as a trade mark under this part of this Act (c).

In a distinctive manner.

(a) "Essential particulars." See *In re Barrows*, 5 Ch. D. 353.

Thus a name pure and simple (unless it was registered before the 13th August, 1875) is not proper subject-matter for registration. It must be printed, impressed, or woven in some distinctive manner—that is, must have some peculiar distinguishing character; as, for instance, in the case of *Stephens v. Peel* (16 L. T. (N. S.) 145), the plaintiff caused the letters on the labels for his ink-bottles to be printed in part white on a red ground, in part white upon a blue ground, and in part blue on a white ground.

Reason for requirement.

The reason of this requirement is that there are now few names which do not belong to many persons in common, and it would be unfair to allow one to arrogate to himself the exclusive use of that to which others have an equal right.

Common name.

The use of a common name by its owners is allowed; but if used with intent to defraud by one of the parties, such unfair user will be restrained, even though hindering the free use of the defrauder's name. Thus it was shown that *H. Holloway* intended fraudulently to deceive the public, and make them believe he was selling his brother's (*Thomas Holloway's*) pills and ointment, by using similar wrappers and labels, although he placed his own initials (*H. H.*) on the boxes. See *Holloway v. Holloway*, 13 Beav. 209.

If no fraudulent intent.

If a fraudulent intention is not proved, a person will not be restrained from using his own name, although another has used it (the same name) first in the same kind of business. *Burgess v. Burgess*, 3 De G. M. & G. 89. The label was "*Burgess' Essence of Anchovies.*"

Written signature.

(b) A written signature is very nearly comprised under the former class. It is the name of the individual written (instead of printed) in a "particular and distinctive manner."

Farina v. Silverlock.

In the case of *Farina v. Silverlock* (1 K. & J. 509; 6 De G. M. & G. 214; 4 K. & J. 650), the defendant was restrained by injunction from printing and selling labels similar to the plaintiff's, and bearing a fac-simile of his signature.

Schweppe and Co.

In the case of *Welch v. Knott* (4 K. & J. 747; 4 Jur.

(N. S.) 330), the defendant used old soda water bottles with the name of the firm (Schwepe & Co.) on the bottles. The labels on the bottles had no name on them, but simply "Soda Water," and it was held that, if a probability of deception had been caused, though unintentionally, by the defendant, the injunction would have continued. See also *Leather Cloth Co. v. American Leather Cloth Co.*, 11 H. & C. 523; and Lord Cranworth's observations in the same case, 4 De G. J. & S. 144; *Byass v. Sullivan*, *Sebastian's Digest*, 104; *Massam v. J. W. Thorley's Cattle Food Co.* 6 Ch. D. 574, 46 L. J. Ch. 707, 36 L. T. (N. S.) 848. In re *Farina*, *Sebastian's Digest*, 394, 405.

(c) Care must be taken that the trade marks under this class are distinct and different from those used in the same class of goods. The changes in this class of trade marks introduced by this section in the inclusion of "brands," and fancy wood or woods not in common use, which latter, although not specially named, were included in s. 10 of 38 & 39 Vict. c. 91. See *Ex parte Stephens*, L. R. 3 Ch. D. 659.

For cases of branding, see *Seixo v. Provezende*, L. R. 1 Branding. Ch. 192; *Moet v. Couston*, 33 Beav. 578; *Pousardin v. Peto*, 33 Beav. 642.

For cases of headings, see *Harter v. Souvazoglu*, *Sebastian's Digest*, page 272. Injunction granted to restrain defendant from using plaintiff's heading, which consisted of different coloured threads affixed to their cotton cloths. In *Carver v. Bowker*, *Sebastian's Digest*, page 350, the heading consisted of specially coloured stripes, certain other stripes, the number 109, the figure of a coroneted eagle, the words "Carver, Irmaos, & Co." In *Robinson v. Finlay*, *Ward v. Robinson*, 9 Ch. D. 487; 39 L. T. (N. S.) 398; 27 W. R. 294, it was held, on appeal, that neither of the parties was entitled to the exclusive use of the group, for the adventure in furtherance of which the trade mark was created being terminated, more than three persons were entitled to the use.

The label in *Wotherspoon v. Currie*, 42 L. J. Ch. 130; *Labels*.

L. R. 5 H. L. 508 was "Glenfield Starch." The infringements consisted of the use of "Glenfield," coupled in with defendant's name. In *Bass v. Dauber*, the defendants were not restrained from using labels bearing a resemblance to Bass & Co.'s, but differing in signature, colour, the words "East India" (pale ale), and a Spanish shield, reversed instead of a pyramid (19 L. T. (N. S.) 626). In *Blackwell v. Crabb* (36 L. J. Ch. 504), an injunction was refused because, although the labels had a general resemblance, there were conspicuous differences in name, &c., and a considerable portion of the remaining matter was of common right. See also *Cocks v. Chandler*, L. R. 11 Eq. 446, 44 L. J. Ch. 575; and *Cotton v. Gillard*, 44 L. J. Ch. 90.

Ticket.

The "ticket" in *Edelston v. Edelston*, 1 De G. J. & S. 185, 9 Jur. (N. S.) 479, was represented by metal labels or tallies, bearing one an anchor, another a crown and anchor, which were attached to the plaintiff's goods (wire).

In *Hirst v. Denham* an injunction was granted restraining the defendants from placing names used by plaintiffs on tickets imitating plaintiffs' and affixing them to their cloths. L. R. 14 Eq. 542.

Fancy word.

The more uncommon a fancy name is the better. See *Young v. Macrae*, 9 Jur. (N. S.) 322.

Single letters.

(b) Before the passing of the Trade Marks Act, 1875, single letters and initials without the addition of any other mark or words were frequently allowed to be registered as trade marks; but since the passing of that Act, unless combined with some distinctive feature, they have not been entitled to protection. Thus in *re Mitchell*, 7 Ch. D. 36, a motion to register a trade mark for steel pens, consisting of the letter A without addition of any kind, was refused, although before the passing of the Act of 1875 the applicants had used that and other letters as trade marks for many years.

Figures.

Figures mean numerals.

(c) Sub. 3 allows trade marks which were actually in use before the 13th of August, 1875, and would not be capable

of being registered but for this subsection under the provisions of the present Act to have the benefits conferred by registration under this Act. This class of trade marks consists principally of combination of letters and figures.

65. A trade mark¹ must be registered for particular goods or classes of goods (a).

Connection of trade marks with goods.

¹ The classification of goods is given in the third schedule to the trade marks rules, see page . If any doubt arises as to what class any particular description of goods belongs, the doubt shall be determined by the comptroller. When any wares are made of mixed materials (for example, both of cotton and silk), they shall be included in such one of the classes appropriated to those materials as the registrar may desire.

Classification of goods.

(a) Property in a trade mark is the right to the exclusive use of some mark, name, or symbol in connection with a particular manufacture or vendible commodity; consequently, the use of the same mark in connection with a different article is not an infringement of such a right of property. Per Lord Westbury in *The Leather Cloth Co. v. The American Leather Cloth Co.*, 33 L. J. Ch. 199. *Hall v. Barrows*, 32 L. J. Ch. 548, 9 Jur. (N. S.) 483. *McAndrew v. Bassett*, 33 L. J. Ch. 561, 10 Jur. (N. S.) 492. *Ainsworth v. Walmsley*, 35 L. J. Ch. 352, 12 Jur. (N. S.) 205. In *re Jelly, Son and Jones* (*Sebastian's Digest of Trade Marks*, page 376).

Trade marks not infringed if used with different classes of goods.

66. When a person claiming to be the proprietor of several trade marks which,¹ while resembling each other in the material particulars thereof, yet differ in respect of (a) the statement of the goods for which they are respectively used or proposed to be used, or

Registration of a series of marks.

(b) statements of numbers, or (c) statements of price, or (d) statements of quality, or (e) statements of names of places, seeks to register such trade marks, they may be registered as a series in one registration, a series of trade marks shall be assignable and transmissible only as a whole; but for all other purposes, each of the trade marks composing a series shall be deemed and treated as registered separately.

When an application relates to a series of trade marks, differing from one another in respect of the above-mentioned particulars, a representation of each mark of the series must be made or affixed upon the form of application, and also upon three or four, as the case may be, separate half sheets of paper in the manner prescribed by rules 13 & 14, pp. 268, 269.

Trade
marks may
be regis-
tered in any
colour.

67. A trade mark may be registered in any colour, and such registration shall (subject to the provisions of this Act) confer on the registered owner the exclusive right to use the same in that or any other colour.

Advertise-
ment of
application.

68. Every application for registration of a trade mark under this part of this Act shall, as soon as may be after its receipt, be advertised by the comptroller.¹

Official
paper.

¹ The advertisement is to be in the official paper: if there is no representation of the trade mark inserted therein, the comptroller must refer in the advertisement to the place where a specimen of the trade mark is deposited for exhibition. See rule 25, page 271.

Specimen.

Wood blocks or other means of advertising trade marks must be supplied to the official paper in accordance with rule 27, see page 272. ^{Means of advertising.}

The comptroller may insert with the advertisement of a series of trade marks a statement of the manner in respect of which the several trade marks differ from one another. ^{Series of marks.}
See rule 28.

69. (1.) Any person may, within two months of the first advertisement of the application, give notice in duplicate¹ at the patent office of opposition to registration of the trade mark, and the Comptroller shall send one copy of such notice to the applicant. ^{Opposition to registration.}

(2.) Within two months after receipt of such notice or such further time as the Comptroller may allow, the applicant may send to the Comptroller a counter-statement in duplicate of the grounds on which he relies for his application, and if he does not do so, shall be deemed to have abandoned his application.

(3.) If the applicant sends such counter-statement, the Comptroller shall furnish a copy thereof to the person who gave notice of opposition, and shall require him to give security in such manner and to such amount as the Comptroller may require for such costs as may be awarded in respect of such opposition; and if such security is not given within fourteen days after such requirement was made or such further time as the Comptroller may allow, the opposition shall be deemed to be withdrawn.

(4.) If the person who gave notice of opposition duly gives such security as aforesaid, the Comptroller shall inform the applicant thereof in writing, and thereupon the case² shall be deemed to stand for the determination of the Court³ (a).

Form of
notice of
opposition.

¹ For form of notice of opposition to application for registration, see form J, second schedule to rules, page 294. The duplicate need not be stamped.

Case.

² When the case stands for the determination of the court in accordance with this section the manner of bringing the case before the court is fixed by the comptroller, as prescribed in rule 29, sub. 1. See page 273. Notice must be given to the comptroller by the applicant that the matter has been brought before the court as prescribed by sub. 4 of the above rule. The non-receipt of this notice by the comptroller shall be deemed sufficient proof that the applicant has abandoned his application.

Notice that
matter has
been
brought be-
fore court.

Abandon-
ment
proved by
non-receipt
of notice.
Copy of
order.

³ If the opposition is disallowed, an office copy of the order must be left at patent office by the party in whose favour it is made. See rule 44, page 278.

"The
court."

(a) Before the passing of this Act "the court" meant (as far as the jurisdiction concerning trade marks was concerned) the Chancery division of the High Court of Justice. The court, according to the definition given by this Act, now means (subject to the provisions for Scotland, Ireland, and the Isle of Man, see s. 107-112) Her Majesty's High Court of Justice in England.

Assignment
and trans-
mission of
trade mark.

70. A trade mark, when registered, shall be assigned (a) and transmitted only in connection with the goodwill (b) of the business concerned in the particular goods or classes¹ of goods for which it has been registered, and shall be determinable with that goodwill.²

¹ For the classification of goods, see the third schedule to the Trade Marks Rules, page 308. Classification of goods.

If any doubt arises as to what class any particular description of goods belongs, the doubt shall be determined by the comptroller. See rule 6, page 266.

When applicant dies before registration, the trade mark may be registered for the successor to the goodwill of the business. See rule 31, page 275. Death of applicant.

(a) Trade marks have always been considered to be intimately connected with the goodwill of the business to which they belong, and for some time to be a part of and included in the goodwill. The property in trade marks has been held to pass, without being specifically mentioned, to the purchaser of the goodwill. *Cooper v. Hood*, 26 Beav. 293, 28 L. J. Ch. 212; *Shipwright v. Clements*, 19 W. R. 599 (*Sebastian's Digest of Trade Marks*, page 210). Trade marks only assigned with goodwill.

"Goodwill means every advantage that has been acquired by the old firm in carrying on its business, whether connected with the premises on which it was previously carried on, or with the name of the late firm, or with any other matter carrying with it the benefit of the business. And when you are parting with the goodwill of a business, you mean to part with all that good disposition which customers entertain towards the house of business identified by the particular name or firm, and which may induce them to continue giving their custom to it." Per Wood (V.-C.), *Churton v. Douglas Johns*, 174; 28 L. J. Ch. 841. Goodwill.

"The goodwill of a trade is a subject of value and price. It may be sold, bequeathed, or become assets in the hands of a personal representative of a trader." Per Tindal, C. J. *Hitchcock v. Coker*, 6 Ad. & E. 438. It comes under the description "goods and chattels" in the Bankruptcy Acts, but, being intangible property, is incapable of seizure by the sheriff. *Ex parte Foss*, in re Baldwin, 2 De G. & J. 230.

71. When each of several persons claims to be registered as proprietor of the same trade mark, Conflicting claims to registration.

the Comptroller may refuse to register any of them until their rights have been determined according to law, and the Comptroller may himself submit,¹ or require the claimants to submit, their rights to the Court (a).

[The submission to the court of conflicting claims shall, unless the court otherwise order, be by special case. See rule 42, page 278.]

Special
case.

¹ For the manner of bringing the case before the court in the event of opposition to registration, see rule 29, page 273.

Oral or
written
statements.

Before exercising this discretion, the comptroller may require the rival claimants to make oral or written statements to him. See rule 41.

Settled by
comptroller.

The special case, if the parties differ, is settled by the comptroller. See rule 43, page 278.

Form.

For form of application for the settlement of a special case on application to register a trade mark, see form T, second schedule, Trade Marks Rules, page 304.

Office copy
of order.

When the court has decided in favour of an applicant, he must leave an office copy of the order at the patent office. See rule 44, page 278.

Practice.

(a) The practice hitherto has been before the Chancery division of the High Court of Justice, chiefly on a special case. Ex parte Grimshaw, W. N. 1877, p. 24.

In Ex parte Stephens, 24 W. R. 819, Jessel (M. R.) held that the registrar having declined to register the proposed trade mark, the proper mode of applying for the opinion of the court was by way of motion to rectify the register by the insertion of the applicant's name as the proprietor of the trade mark, two clear days' notice being given to the registrar of trade marks, and the application being supported by an affidavit by the applicant, stating the facts. (Sebastian's Digest of T. M. C., 301.) See note to s. 72.

72. (1). Except where the Court (a) has decided that two or more persons are entitled to be registered as proprietors of the same trade mark, the Comptroller shall not register in respect of the same goods or description of goods a trade mark identical with one already on the register with respect to such goods or description of goods (b).

Restrictions
on registra-
tion.

(2.) The Comptroller shall not register with respect to the same goods or description of goods a trade mark so nearly resembling a trade mark already on the register with respect to such goods or description of goods as to be calculated to deceive (c).

(a) See note to s. 71 for methods of obtaining the decision of the court. In re Salamon (Sebastian's Digest, page 340), the practice was fully explained by Jessel (M. R.):

Application
to the court
how made.

"I always direct these cases to be mentioned to the court, that I may decide the proper way in which they are to come before the court; that way depends on the circumstances in each case. If it be a simple question of law, it had better be by special case; if for directions as to carrying out the Act, by summons at chambers; if of disputed facts, by motion."

(b) An identical mark will be registered in two names when each of the parties has used the mark independently and *bonâ fide* for several years. In re Powell; In re Platt, 1 Trade Marks, page 237.

Identical
mark.

(c) The following are instances of cases of trade marks so nearly resembling each other as to be calculated to deceive: A female hand pointing horizontally, with the letters W. & G. upon it, was held to be too similar to a male hand held upwards. *Allsopp v. Walker*—Sebastian's Digest, page 325; In re Rosings—1 Trade Marks, 371; In re Jelly,

Marks cal-
culated to
deceive.

Son, & Jones—1 Trade Marks, page 346. In re Farina, "Gegenuber dem Elogius Platz" was held to be too similar to "Gegenuber dem Zulichs Platz" (27 W. R. 456). See notes to s. 64.

No mark to be registered more than three times.

In holding that a third trade mark, similar to two others on the register, might be registered with the consent of the proprietors of the other two, the Master of the Rolls said :

"The commissioners of patents have considered the point as to how often any new device or emblem may be registered as a trade mark for goods or articles in the same class, and they have decided that, for the sake of distinctiveness, in no case whatever should the number of times exceed three. They have also decided that, if a device is used by more than three persons, it cannot be registered at all under the Act (T. M. A. 1875-6), as, being used by so many persons, it wants the element of distinctiveness which is necessary for a trade mark, as defined by the Act, to possess. A mark that is common to several persons cannot be said to be a distinctive mark, and therefore cannot be registered." In re the Walkden Aerated Waters Co., 1 Trade Marks, 39.

Further restriction on registration.

73. It shall not be lawful to register as part of or in combination with a trade mark any words the exclusive use of which would by reason of their being calculated to deceive (a) or otherwise (b), be deemed disentitled to protection in a Court of Justice (c), or any scandalous design.

Court of Justice.

(a) See notes to s. 72.

Puffing.

Mere puffing is not sufficient to disentitle a plaintiff from his remedy, such as the assumption of the title of "professor," and some exaggerated commendations of medicines. *Holloway v. Holloway*, 13 Beav. 209. The word "patent" or "patentee" inserted in a trade mark, if there

is no patent, or after the patent has expired, disentitles the plaintiff in an action for infringement to any remedy. Per Jessel, M. R., 5 Ch. D. 862 :

“You may state in as many words, or by implication, that the article is manufactured in accordance with a patent that has expired. But if you suggest that it is protected by an existing patent you cannot obtain the protection of that representation as a trade mark. Protection only extends to the time allowed by the statute for the patent, and if the court were afterwards to protect the use of the word as a trade mark, it would be in fact extending the time for protection given by the statute. It is therefore impossible to allow a man who has once had the protection of a patent to obtain a further protection by using the name of the patent as a trade mark.”

See also *Morgan (the Patent Crucible Co.) v. McAdam*, 36 L. J. Ch. 228; *Lamplough (Pyretic Saline, with words Royal Letters Patent) v. Balmer*, W. N. 1867, page 293; *The Leather Cloth Co. v. Lorsont*, L. R. 9 Eq. 345, 39 L. J. Ch. 86; *Nixey (Manufacturer and Patentee) v. Roffey*, W. N. 1870, page 227.

The packets in which wares are contained must not be labelled with extravagant and false statements. *Pidding v. Howe*, 8 Sim. 477; *Perry v. Truefitt*, 6 Beav. 66. Extrava-
gant state-
ments.

For penalty on falsely representing articles to be patented, see s. 105.

(b) Such maxims as “He who seeks equity must do equity,” “He who comes into court must come with clean hands,” “Delay defeats equities,” must be complied with. Thus if the owner of a trade mark seek to restrain by injunction another from using his trade mark, he himself must not be guilty of false and misleading representations in connection with the property he seeks to protect, for in so doing he loses his right to claim the assistance of a court of equity. *Leather Cloth Co. v. American Cloth Co.*, 33 L. J. Ch. 199. Equitable
maxims.

(c) The words "in a court of justice" are substituted for "in a court of equity" in the former Acts (38 & 39 Vict. c. 91, s. 6). By the Judicature Acts, 1873 to 1876, it is enacted that in every civil cause or matter, law and justice shall be administered concurrently, and that in all matters not particularly mentioned in the Act where there is any conflict or variance between the laws of equity and the rules of common law, the rules of equity shall prevail. See 36 & 37 Vict. c. 66, s. 24 & 25, sub. 11.

Saving for
power to
provide for
entry on
register of
common
marks as
additions to
trade
marks

74. (1.) Nothing in this Act shall be construed to prevent the comptroller entering on the register, in the prescribed manner, and subject to the prescribed conditions, as an addition to any trade mark (a)—

(a.) In the case of an application for registration of a trade mark used before the thirteenth day of August, one thousand eight hundred and seventy-five—

Any distinctive device, mark, brand, heading, label, ticket, letter, word, or figure, or combination of letters, words, or figures, though the same is common to the trade in the goods with respect to which the application is made;

(b.) In the case of an application for registration of a trade mark not used before the thirteenth day of August, one thousand eight hundred and seventy-five—

Any distinctive word or combination of

words, though the same is common to the trade in the goods with respect to which the application is made.

(2.) The applicant for entry of any such common particular or particulars must, however, disclaim in his application any right to the exclusive use of the same, and a copy of the disclaimer shall be entered on the register (*b*).

(3.) Any device, mark, brand, heading, label, ticket, letter, word, figure, or combination of letters words, or figures, which was or were, before the thirteenth day of August one thousand eight hundred and seventy-five, publicly used (*c*) by more than three persons on the same or a similar description of goods shall, for the purposes of this section, be deemed common to the trade in such goods.

(*a*) See *Raggett v. Findlater*, L. R. 17 Eq. 29; 43 L. J. Ch. 64; *Lea v. Millar*, Seton, 4th ed. 242; *Carver v. Bowker*, 1 Trade Marks, 252; *In re Hyde & Co.* 7 Ch. D. 724, 38 L. T. (N. S.) 777; *Orr Ewing & Co. v. Johnston & Co.* 40 L. T. (N. S.) 307.

(*b*) See s. 64 for words which will not be allowed.

(*c*) Registration is equivalent to public use. It is not sufficient to produce tickets or labels bearing the mark alleged to be common to the trade; it must be shown that they had been used or known. *Orr Ewing v. Johnston & Co.* 40 L. T. (N. S.) 307. If not registered, the articles marked must have been or be actually in the market; advertisement is not sufficient. *McAndrew v. Bassett*, 33 L. J. Ch. 561; *Maxwell v. Hogg*, 36 L. J. Ch. 433.

Effect of Registration.

Registration
equivalent to
public use.

75. Registration of a trade mark shall be deemed to be equivalent to public use of the trade mark.

Unless the connection with the goodwill required by 38 & 39 Vict. c. 91, s. 2, was preserved, registration under that Act would not amount to a public use. Although, by this Act, a trade mark can only be assigned in connection with the goodwill (see s. 70), there is no similar provision as to registration under such circumstances not amounting to a public use.

Right of first
proprietor
to exclusive
use of trade
mark.

76. The registration of a person as proprietor of a trade mark shall be *primâ facie* evidence of his right to the exclusive use of the trade mark, and shall, after the expiration of five years (a) from the date of the registration, be conclusive evidence of his right to the exclusive use of the trade mark, subject to the provisions of this Act.

(a) After a trade mark has been registered for five years the title of the owner is established, and no other person can prove a title to the same trade mark, which can only be invalid because of inherent defects.

For instance, if the goodwill be separated from the trade mark, or is determined on if there never was any goodwill, the proprietor of the mark would have no right to its exclusive use (see s. 70), or if it were calculated to deceive, or contrary to law, or contained a scandalous design. See s. 73.

Restrictions
on actions
for in-
fringement
and on
defence to
action in
certain
cases.

77. A person shall not be entitled to institute any proceeding to prevent or to recover damages for the infringement of a trade mark unless, in the case of a trade mark capable of being registered

under this Act, it has been registered in pursuance of this Act, or of an enactment repealed by this Act, or, in the case of any other trade mark in use before the thirteenth of August one thousand eight hundred and seventy-five, registration thereof under this part of this Act, or of an enactment repealed by this Act, has been refused. The Comptroller may, on request, and on payment of the prescribed fee, grant a certificate¹ that such registration has been refused (a).

¹ For form of request for certificate of refusal to register a trade mark in use before the 13th August, 1875, see second schedule, Trade Marks Rules, form L, page 296. Form of application.

(a) For example, a single letter is not capable of registration since the 13th of August, 1875, even if the letter has been used as a trade mark for many years before that date (In re Mitchell, 7 Ch. D. 36); therefore, to entitle the owner to bring an action for infringement, he must produce the certificate of refusal granted by the comptroller. See ss. 94 & 96. Certificate of refusal.

Register of Trade Marks.

78. There shall be kept at the patent office a book called the Register of Trade Marks,¹ wherein shall be entered the names and addresses of proprietors of registered trade marks (a), notifications of assignments (b) and of transmissions of trade marks, and such other matters as may be from time to time prescribed. Register of trade marks.

¹ See rules 30-48, pp. 274-280.

For regulation as to inspection of register, see rule 49, page 280.

(a) A trust will not be entered in the register. See s. 85.

(b) For entry of assignments in register, see s. 87.

Removal of
trade mark
after four-
teen years
unless fee
paid.

79. (1.) At a time not being less than two months nor more than three months before the expiration of fourteen years from the date of the registration of a trade mark, the Comptroller shall send notice to the registered proprietor that the trade mark will be removed from the register unless the proprietor pays to the Comptroller before the expiration of such fourteen years (naming the date at which the same will expire) the prescribed fee;¹ and if such fee be not previously paid, he shall, at the expiration of one month from the date of the giving of the first notice, send a second note to the same effect.

(2.) If such fee be not paid before the expiration of such fourteen years, the Comptroller may, after the end of three months from the expiration of such fourteen years, remove the mark from the register, and so from time to time at the expiration of every period of fourteen years.

(3.) If before the expiration of the said three months the registered proprietor pays the said fee together with the additional prescribed fee,¹ the Comptroller may, without removing such trade mark from the register, accept the said fee as if it had been paid before the expiration of the said fourteen years.

(4.) Where after the said three months a trade mark has been removed from the register for non-payment of the prescribed fee, the Comptroller may, if satisfied that it is just so to do, restore such trade mark to the register on payment of the prescribed additional fee.

(5.) Where a trade mark has been removed from the register for non-payment of the fee or otherwise, such trade mark shall nevertheless for the purpose of any application for registration during the five years next after the date of such removal, be deemed to be a trade mark which is already registered (a).

¹ See first schedule to Trade Marks Rules, page 287.

(a) This provision is to prevent the registration of similar marks (see s. 72, sub. 1), and to protect the public from being induced thereby to believe that articles so marked have been manufactured by the owner of the lapsed trade mark. Lapsed marks.

Fees.

80. There shall be paid in respect of applications and registration and other matters under this part of this Act, such fees as may be from time to time, with the sanction of the Treasury, prescribed by the Board of Trade: and such fees shall be levied and paid to the account of Her Majesty's Exchequer in such manner as the Treasury may from time to time direct.¹ Fees for registration, etc.

¹ See first schedule to Trade Marks Rules, page 287.

Sheffield Marks.

Registration
of
Cutlers'
Company of
Sheffield
marks.

81. With respect to the master, wardens, searchers, assistants, and commonalty of the Company of Cutlers in Hallamshire (a), in the county of York (in this Act called the Cutlers' Company), and the marks or devices (in this Act called Sheffield marks) assigned or registered by the master, wardens, searchers, and assistants of that company, the following provisions shall have effect :

- (1.) The Cutlers' Company shall establish and keep at Sheffield a new register of trade marks (in this Act called the Sheffield register) :
- (2.) The Cutlers' Company shall enter in the Sheffield register, in respect of cutlery, edge tools, or raw steel, and the goods mentioned in the next subsection, all the trade marks entered before the commencement of this Act in respect of cutlery, edge tools, or raw steel, and such goods in the register established under the Trade Marks Registration Act, 1875, belonging to persons carrying on business in Hallamshire, or within six miles thereof, and shall also enter in such register, in respect of the same goods, all the trade marks which shall have been assigned by the Cutlers' Company and actually used before the commencement of this Act, but which have not been entered

in the register established under the Trade Marks Registration Act, 1875.

- (3.) An application for registration of a trade mark used on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge, shall, if made after the commencement of this Act by a person carrying on business in Hallamshire, or within six miles thereof, be made to the Cutlers' Company :
- (4.) Every application so made to the Cutlers' Company shall be notified to the Comptroller in the prescribed manner,² and unless the Comptroller within the prescribed time gives notice to the Cutlers' Company that he objects to the acceptance of the application,³ it shall be proceeded with by the Cutlers' Company in the prescribed manner :⁴
- (5.) If the Comptroller gives notice of objection as aforesaid, the application shall not be proceeded with by the Cutlers' Company ; but any person aggrieved may appeal to the Court.
- (6.) Upon the registration of a trade mark in the Sheffield register the Cutlers' Company shall give notice thereof to the Comptroller, who shall thereupon enter the mark in the register of trade marks ; and such registration shall bear date as of the day of application to the

Cutlers' Company, and have the same effect as if the application had been made to the Comptroller on that day :

- (7.) The provisions of this Act,⁵ and of any general rules made under this Act, with respect to application (b) for registration in the register of trade marks, the effect of such registration, and the assignment and transmission of rights in a registered trade mark shall apply in the case of applications and registration in the Sheffield register (c) ; and notice of every entry made in the Sheffield register must be given to the Comptroller by the Cutlers' Company, save and except that the provisions of this subsection shall not prejudice or affect any life, estate, and interest of a widow of the holder of any Sheffield mark which may be in force in respect of such mark at the time when it shall be placed upon the Sheffield register (d) :
- (8.) Where the Comptroller receives from any person not carrying on business in Hallamshire or within six miles thereof an application for registration of a trade mark used on cutlery, edge tools, or on raw steel, or on goods made of steel, or of steel and iron combined, whether with or without a cutting edge, he shall in the prescribed manner notify the application and proceedings thereon to the Cutlers' Company :⁶

- (9.) At the expiration of five years from the commencement of this Act the Cutlers' Company shall close the Cutlers' register of corporate trade marks, and thereupon all marks entered therein shall, unless entered in the Sheffield register, be deemed to have been abandoned :
- (10.) A person may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of two or more trade marks :
- (11.) A body of persons, corporate or not corporate, may (notwithstanding anything in any Act relating to the Cutlers' Company) be registered in the Sheffield register as proprietor of a trade mark or trade marks.
- (12.) Any person aggrieved by a decision of the Cutlers' Company in respect of anything done or omitted under this Act may, in the prescribed manner, appeal to the Comptroller,⁷ who shall have power to confirm, reverse, or modify the decision, but the decision of the Comptroller shall be subject to a further appeal to the Court (e) :
- (13.) So much of the Cutlers' Company's Acts as applies to the summary punishment of persons counterfeiting Sheffield corporate marks, that is to say, the fifth section of the Cutlers' Company's Act of 1814, and the pro-

visions in relation to the recovery and application of the penalty imposed by such last-mentioned section contained in the Cutlers' Company's Act of 1791, shall apply to any mark entered in the Sheffield register.

Sheffield
application
in duplicate.
Notice to
comptroller.

¹ All applications to be in duplicate. See rule 53, page 282.

Cutlers'
Company.

² The Cutlers' Company, within seven days of the receipt by them of an application, shall send a copy, together with copies of the representation, to the comptroller, as prescribed in rule 54.

³ The prescribed time is one month from the date of the receipt by the comptroller of the notice sent by the Cutlers' Company. See s. 55, sub. 2.

⁴ For provision as to means of advertising applications made as Sheffield, see rule 55.

⁵ See rule 56, page 284.

⁶ By sending to the Cutlers' Company a copy of the official paper containing the application of which notice is required to be given, with a note distinguishing such application. See rule 55, sub. 3.

⁷ The form of appeal must be in duplicate, one of which need not be stamped. For form, see second schedule to rules, form W, page 307.

(a) The Cutlers' Company was incorporated under 21 Jac. I. c. 31 (1623). The 31 Geo. III. c. 58 confines the company to those engaged in "the arts or trades of makers of knives, sickles, shears, scissors, razors, files, and forks;" and the 23 Vict. c. 43 widens this enumeration thus: "The arts or trades of manufacturers of steel and makers of saws and edge tools and other articles of steel, or of steel and iron combined, having a cutting edge." By sub. 3 a further extension is made by permitting and requiring trade marks in articles not having a cutting edge, made of iron or steel, or of both combined, to be registered in the Sheffield register.

(b) See ss. 62 & 63 for applications for registration.

(c) For effect of registration and assignment, see ss. 66, 67, 69-77. A cutler's corporate mark, is assignable when owned by a non-freeman of the Cutlers' Company. The assignability of such a mark, containing a personal element, must depend upon the circumstances of the particular case. See *Bury v. Bedford*, 32 L. J. Ch. 741, 4 De G. J. & S. 352. In assigning trade marks, which are cutlers' corporate marks, a proper title is not given to the assignee, and he will not be registered as owner of the marks until the marks have been surrendered by the assignor to the Cutlers' Company, and reassigned by the company to the assignee. In *re Rabone Bros. & Co.*, *Sebastian's Digest of Trade Marks*, page 395.

(d) By 4 Geo. III. c. 97, if a freeman of the Cutlers' Company makes a will, or dies without making a will, the mark passes in the same manner as the other personalty subject to the widow's life estate.

(e) If the Cutlers' Company unsuccessfully oppose an application to register a trade mark, on the ground that the mark in question so nearly resembles a Sheffield mark as to be calculated to deceive, they must pay the costs, notwithstanding they intended to act for the public interest. In *re Rosing*, 1 *Trade Marks*, 371.

PART V.

GENERAL.

Patent Office and Proceedings thereat.

82. (1.) The Treasury may provide for the purposes of this Act an office with all requisite buildings and conveniences, which shall be called, and is in this Act referred to as, the Patent Office (a). Patent
Office.

(2). Until a new patent office is provided, the offices of the Commissioners of Patents for inven-

tions and for the registration of designs and trade marks existing at the commencement of this Act shall be the patent office within the meaning of this Act.

(3.) The patent office shall be under the immediate control of an officer called the Comptroller-General of patents, designs, and trade marks, who shall act under the superintendence and direction of the Board of Trade.

(4.) Any act or thing directed to be done by or to the Comptroller may, in his absence, be done by or to any officer for the time being in that behalf authorised by the Board of Trade.

(a) The existing patent office is at 25, Southampton Buildings, Chancery Lane, London, W.C.

Patent
Museum.

The Patent Museum at South Kensington is by this Act placed under the control of the Science and Art Department. See s. 41; and as to models, s. 42.

Officers and
clerks.

83. (1.) The Board of Trade (a) may at any time after the passing of this Act, and from time to time, subject to the approval of the Treasury, appoint a Comptroller-General of patents, designs, and trade marks, and so many examiners and other officers and clerks, with such designations and duties as the Board of Trade think fit, and may from time to time remove any of those officers and clerks.

(2.) The salaries of those officers and clerks shall be appointed by the Board of Trade, with the concurrence of the Treasury, and the same and

the other expenses of the execution of this Act shall be paid out of money provided by Parliament.

(a) See s. 22.

84. There shall be a seal for the Patent Office, and impressions thereof shall be judicially noticed and admitted in evidence. Seal of patent office.

85. There shall not be entered in any register kept under this Act, or be receivable by the Comptroller (a), any notice of any trust¹ expressed, implied, or constructive (b). Trust not to be entered in registers.

¹ Although no notice of a trust is receivable by the comptroller, yet trusts will be registered on the registers of the patent office. This is expressly authorised by Patents Rule 27, page 195, which authorises applications for a patent to be made by communication from abroad. The person applying is a trustee for the communicator, but as far as the register is concerned he appears to be the sole owner of the patent, and in the form of application for letters patent he claims "to be the true and first inventor." See application for patent for inventions communicated from abroad, form A, in the second schedule to the Patents Rules, page 219. Communications.

(a) Deeds of trust have hitherto been registered as such by the patent office, but now even notice of a trust to the comptroller will not be received. See, however, s. 87 and proviso, that any equities in respect of such patent design or trade mark may be enforced in like manner as in respect of any other personal property. Trusts.

"A trust means an obligation under which some person is bound or has bound himself, to deal with the beneficial interest in real or personal property which is vested in him in a particular manner and for a particular purpose, either

wholly in favour of another or others, or partially in favour of another or others conjointly with himself." See Underhill on Trusts, page 1 and note.

Expressed,
implied, or
constructive.

"A person may declare a trust either directly or indirectly; the former by creating a trust *eo nomine* in the form and terms of a trust, the latter without affecting to create a trust in words by evincing an intention which the courts will effectuate through the medium of an implied trust." Lewin on Trusts, page 98. Of these the direct is termed an express trust, and the indirect an implied or constructive trust, which expressions appear from the books to be almost identical.

Refusal to
grant
patent, etc.,
in certain
cases.

86. The Comptroller may refuse¹ to grant a patent for an invention, or to register a design or trade mark, of which the use would, in his opinion, be contrary to law (a) or morality.

Discretionary
power of
comptroller.

¹ Before exercising this discretionary power adversely to an applicant, the comptroller must give him an opportunity of being heard. For provision as to notice to the applicant by the comptroller, and for notice to the comptroller of the applicant's desire to be heard, and as to the hearing, see Patents Rules 11-13. The provisions as to the exercising this power on applications for the registration of designs and trade marks are similar to those required by the Patents Rules. See Designs Rules, 13-15 (inclusive), Trade Marks Rules 17 & 18.

Contrary to
law.

(a) This is in accordance with the Statute of Monopolies, which provides that grants of privilege shall not be "contrary to law, nor mischievous to the state by raising prices of commodities at home, or hurt of trade, or generally inconvenient." The words "contrary to law" must not be taken in the widest sense; for instance, it is contrary to common law that letters patent should be granted for an invention which is not of public utility, but it is not intended that the comptroller should institute an examination with

regard to utility; the intention is to prevent the grant of patents which are contrary to the policy of the law; for example, for such inventions as have for their object the affording of means to violate the law, such as implements of housebreaking, &c.

87. Where a person becomes entitled by assignment (a), transmission, or other operation of law to a patent,¹ or to the copyright in a registered design, or to a registered trade mark,² the Comptroller shall on request,³ and on proof of title to his satisfaction, cause the name of such person to be entered as proprietor of the patent, copyright in the design, or trade mark, in the register of patents, designs, or trade marks, as the case may be. The person for the time being entered in the register of patents, designs or trade marks, as proprietor of a patent, copyright in a design or trade mark as the case may be, shall, subject to any rights appearing from such register to be vested in any other person, have power absolutely to assign, grant licenses as to, or otherwise deal with, the same and to give effectual receipts for any consideration for such assignment, license, or dealing. Provided that any equities in respect of such patent, design, or trade mark may be enforced in like manner as in respect of any other personal property (b).

Entry of assignments and transmissions in registers.

¹ For rule as to unfinished application of deceased inventor, see Patents Rules, No. 24, page 194.

Deceased inventor.

² When applicant dies before registration, the trade mark may be registered for successor to goodwill of business. See rule 31, page 275.

Registration of trade mark of deceased applicant.

- Request.** ^a The request is to be addressed to the comptroller, and left at the patent office (see Patents Rule 65, page 205), and the form of the request must be as shown in the second schedule to the patents rules, and accompanied by documents or official copies in proof of the declarations. See form L, page 233.
- Patents.**
- Form.**
- Signature.** The request must be signed by the applicant or his agent ; and, in the case of a body corporate, by their agent,
- Particulars.** as prescribed in rule 66, page 206, and particulars of the means by virtue of which the applicant claims to be proprietor must be given, as required by rule 67, page 206,
- Documents of title.** and documents of title and other proof must be given, as required by rule 68, page 206.
- Trade marks.** The form of request required to be furnished on the application by a proprietor subsequent to the original applicant is given in the second schedule to the Trade Marks Rules, form K, page 295. The contents and signature must be as prescribed by Trade Marks Rules 35 & 36, page 276, and the request must be accompanied by a statutory declaration verifying the statements contained therein. See Trade Marks Rule 37, page 276. Similar requirements are required on an application for the registration of subsequent proprietors of designs. See Designs Rules, 22-26 (inclusive), pp. 246-248. For form of application for registration of subsequent proprietor of design, see form K, second schedule to Designs Rules, page 232.
- Form.**
- Signature.**
- Declaration.**
- Designs.**
- Proof of title.** ^a See Patents Rules, Nos. 68 & 69, pp. 206, 207 ; Designs Rules, Nos. 25 & 26, page 248 ; Trade Marks Rules, Nos. 37 & 38, pp. 276, 277.
- Assignee.** (a) This section is similar to s. 35 of 15 & 16 Vict. c. 83, under which it was decided that an assignee cannot sue against an infringer until the assignment be entered on the register. *Chollet v. Hoffman*, 7 E. & B. 686. He might, however, maintain an action against the assignor and subsequent licensees who have had notice of his assignment ; and his right of action will run from the date of assignment, not the date of registration. *Hassell v. Wright*, L. R. 10 Eq. 509.

As to assignment for particular places and parts of the United Kingdom, see s. 36 and note. Assignment for particular places.

(b) An equitable interest cannot be registered. See s. 85. Should the person in whom the legal interest is, and whose name is entered on the register as the proprietor, be guilty of a breach of trust, the cestui que trust can choose one or all of the following remedies: (1) He can follow the trust property into the hands of third parties to whom it has been wrongfully conveyed, who will be considered mere trustees for the persons entitled under the trust. If such party or person through whom he claims has purchased the property *bona fide*, and has not had notice expressly or constructively, he then merits the full protection of the court, and his title even in equity cannot be impeached. See Lewin on Trusts, 7th ed., page 728. (2) He can proceed against the trustees and any other parties who have been guilty of a fraudulent breach of trust, and the statute of limitations will not run in their favour until the fraud is known to the persons affected by it. See *Rolfe v. Gregory*, 11 Jur. (N. S.) 98, and cases cited in *Underhill on Trusts*, page 192. (3) He can, under certain circumstances, attach the property into which the trust estate has been wrongfully converted. See *Lewin on Trusts*, 7th ed., page 762. When it is doubtful whether the relations between the parties is one of contract or of trust, see judgments of Brett (L. J.) and Baggallay (L. J.) in *Wilson v. Lord Bury* and others, 5 Q. B. D. 519. Breach of trust.

88. Every register kept under this Act shall at all convenient times be open to the inspection of the public,¹ subject to such regulations as may be prescribed; and certified copies,² sealed with the seal of the Patent Office, of any entry in any such register shall be given to any person requiring the same on payment of the prescribed fee.³ Inspection of and extract from registers.

¹ See Patents Rules, No. 75, page 208; Designs Rules, No. 33, page 250; Trade Marks Rules, No. 49, page 280.

² See Patents Rules, No. 76, page 209; Designs Rules, No. 34, page 251; Trade Marks Rules, No. 57, page 284.

³ See Patents Rules, first schedule, Nos. 33, 34 & 35, page 197; Designs Rules, first schedule, Nos. 14 & 15, page 245; Trade Marks Rules, first schedule, Nos. 23 & 24, page 271.

Sealed
copies to be
received in
evidence.

89. Printed or written copies or extracts, purporting to be certified by the Comptroller¹ and sealed with the seal of the Patent Office, of or from patents, specifications, disclaimers, and other documents in the Patent Office, and of or from registers and other books kept there, shall be admitted in evidence in all Courts in Her Majesty's dominions, and in all proceedings, without further proof or production of the originals.

¹ See Patents Rules, No. 76, page 209.

Rectifica-
tion of
register by
court.

90. (1.) The Court may on the application of any person aggrieved by the omission without sufficient cause of the name of any person from any register kept under this Act,¹ or by any entry made without sufficient cause in any such register (a), make such order for making, expunging, or varying the entry, as the Court thinks fit; or the Court may refuse the application; and in either case may make such order with respect to the costs of the proceedings as the Court thinks fit.

(2.) The Court may, in any proceeding under this section, decide any question that it may be necessary

or expedient to decide for the rectification of a register, and may direct an issue to be tried for the decision of any question of fact, and may award damages to the party aggrieved.

(3.) Any order of the Court rectifying a register shall direct that due notice of the rectification be given to the Comptroller.²

¹ For provision as to entry of order of the court upon the register, see Patents Rules, No. 71, page 207; Designs Rules, No. 28, page 248; Trade Marks Rules, No. 44, page 278.

² For form of notice of application for alteration or rectification of Register Trade Marks, see second schedule to Trade Marks Rules, form N, page 298.

(a) See notes to ss. 62 & 69 for registration of trade marks. Two registers of patents have been kept at the patent office, one containing the names of the patents in chronological order, with the dates of the filing of specifications, disclaimers, &c., and is called The Register of Patents; the other contains entries of assignments, licenses, &c., and is called The Register of Proprietors. These registers may be inspected by anyone on payment of 1s. See s. 88.

The court is now the High Court of Justice. When this jurisdiction was in the hands of the Master of the Rolls, there was no appeal from his decision. In *re Horsley and Knighton's Patent*, L. R. 4 Ch. 784.

91. The Comptroller may, on request in writing¹ accompanied by the prescribed fee,²—

¹ Power of
comptroller
to correct
clerical
errors.

(a.) Correct any clerical error in or in connection with an application for a patent, or for registration of a design or trade mark; or

- (b.) Correct any clerical error in the name, style, or address of the registered proprietor of a patent, design, or trade mark ;
- (c.) Cancel the entry (a) or part of the entry of a trade mark on the register :³ Provided that the applicant accompanies his request by a statutory declaration⁴ made by himself, stating his name, address, and calling, and that he is the person whose name appears on the register as the proprietor of the said trade mark.

¹ See form of request for correction of clerical error with regard to a trade mark, form Q, Trade Marks Rules, page 301 ; with regard to a design, see form M, Designs Rules, page 263 ; with regard to a patent, see form P, Patents Rules, page 237.

² The fee prescribed in the Patents Rules is five shillings, and is the same with regard to designs and trade marks. See page 217.

³ See form O for application, by proprietor of registered trade mark, to cancel entry on register. Second schedule to Trade Marks Rules, page 299.

⁴ See form P for form of declaration in support of application for cancellation of trade mark by owner. The fee prescribed for this is five shillings. See first schedule to Trade Marks Rules, page 287.

(a) If in cancelling any part of an entry the proprietor makes an addition to, or alteration in, a trade mark, the proper course is to apply to the court, having first given notice to the comptroller. See s. 92.

Alteration
of regis-
tered mark.

92. (1.) The registered proprietor of any registered trade mark may apply to the Court for leave to add to or alter such mark in any particular, not

being an essential particular (a) within the meaning of this Act, and the Court may refuse or grant leave on such terms as it may think fit.

(2.) Notice of any intended application to the Court under this section shall be given to the Comptroller by the applicant; and the Comptroller shall be entitled to be heard on the application.¹

(3.) If the Court grants leave, the Comptroller shall, on proof thereof and on payment of the prescribed fee, cause the register to be altered in conformity with the order of leave.²

¹ Whenever the registered proprietor of any trade mark intends to apply to the court, as provided by this section, fourteen days' notice at least must be given to the comptroller. See rule 48, page 280.

For form of notice, see form M, Trade Marks Rules, second schedule, page 297.

² If leave be granted by the court, the applicant must forthwith supply to the comptroller such a number of representations of the trade mark as altered as he may deem sufficient. See rules 44 & 48, pp. 278-280.

For form of application for alteration or rectification of Register of Trade Marks, see form N, second schedule to Trade Marks Rules, page 298. The fee prescribed is ten shillings. *See first schedule to Trade Marks Rules, No. 14, page 287.

(a) The essential particulars of a trade mark are given in s. 64 and note. See judgment of Malins (V.-C.), In re Barrow's Trade Marks, 5 Ch. D. 363.

93. If any person makes or causes to be made a false entry in any register kept under this Act, or a writing falsely purporting to be a copy of an

Falsification of entries in registers.

entry in any such register, or produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, he shall be guilty of a misdemeanor.

Exercise of discretionary power by comptroller.

94. Where any discretionary power is by this Act given to the Comptroller, he shall not exercise that power adversely to the applicant for a patent, or for amendment of a specification, or for registration of a trade mark or design, without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard personally or by his agent.¹

¹ For provisions as to hearing and the required notices to be given, see Patents Rules, 11-16 inclusive, pp. 189, 190; Trade Marks Rules, 17-19 inclusive, page 270; Designs Rules, 13-15, page 245.

Power of comptroller to take directions of law officers.

95. The Comptroller may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to either of the law officers for directions in the matter.

Certificate of comptroller to be evidence.

96. A certificate¹ purporting to be under the hand of the Comptroller as to any entry, matter, or thing which he is authorised by this Act, or any general rules made thereunder, to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

¹ Certificates of payment or renewal, see Patents Rules 42-45 inclusive, pp. 199-200; see form J, Patents Rules,

second schedule, page 231. When a certificate is required for the purpose of any legal proceeding or other special purpose, the comptroller is authorised to grant such a certificate on conditions expressed in Designs Rules, No. 34, page 251, and Trade Marks Rules, No. 57, page 284.

Request for certificate of refusal to register a trade mark in use before 13th August, 1873, see Trade Marks Rules, second schedule, form L, page 296.

Request for certificate for registration abroad, see Trade Marks Rules, second schedule, form B, page 312.

Request for certificate of registration for use in legal proceedings, see form S, second schedule, Trade Marks Rules, page 303.

For form of general certificate of comptroller, see Trade Marks Rules, form U, second schedule, page 305.

97. (1.) Any application, notice, or other document authorised or required to be left, made, or given at the Patent Office or to the Comptroller, or to any other person under this Act, may be sent by a prepaid letter through the post; and if so sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post.¹

Applica-
tions and
notices by
post.

(2.) In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

¹ For mode of sending notices, &c., see Patents Rules, No. 19, page 191; Designs Rules, No. 12; Trade Marks Rules, No. 16.

(a) As by s. 13 every patent shall be dated and sealed as of the day of application, when the applications are sent by post the inventor should take care that he is in a position to prove the posting in the prescribed manner.

Provision
as to days
for leaving
documents
at office.

98. Whenever the last day fixed by this Act, or by any rule for the time being in force, for leaving any document or paying any fee at the Patent Office shall fall on Christmas Day, Good Friday, or on a Saturday or Sunday, or any day observed as a holiday at the Bank of England, or any day observed as a day of public fast or thanksgiving, herein referred to as excluded days, it shall be lawful to leave such document or to pay such fee on the day next following such excluded day, or days if two or more of them occur consecutively.¹

¹ The patent office is open every week-day during the hours from ten till four, except on the above-mentioned days, see rule 7, Patents Rules, page 188.

Declaration
by infant,
lunatic, &c.

99. If any person is, by reason of infancy (a), lunacy or other inability, incapable of making any declaration¹ or doing anything required or permitted by this Act or by any rules made under the authority of this Act, then the guardian or committee (if any) of such incapable person, or if there be none, any person appointed by any Court or judge (b) possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person, and all acts done by such substitute shall for the

purposes of this Act be as effectual as if done by the person for whom he is substituted.

¹ For manner in which and persons before whom declaration is to be taken, see Trade Marks Rules, Nos. 58 & 59 ^{Infant inventor.} inclusive, page 285.

(a) If a grant of letters patent were made to an infant inventor he would not be able to derive much commercial benefit therefrom, for his contracts would not be binding on himself, and it is unreasonable to expect that others would bind themselves under these circumstances. He could not enforce specific performance of his contracts, because the remedy would not be mutual, an infant not being bound. *Flight v. Bolland*, 4 Russ. 298.

(b) By the Judicature Act, 1873, ss. 33 & 34, the wardship of infants and the care of infants' estates, and by s. 17 the jurisdiction usually vested in the Lord Chancellor or in the Lord Justices of Appeal in Chancery or either of them in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind, was preserved and not vested in the High Court of Justice, but by s. 7 of the Judicature Act, 1875, it was enacted that this jurisdiction shall be exercised by such judge or judges of the High Court of Justice or Court of Appeal as may be entrusted by the sign manual of Her Majesty or her successors with the care and commitment of the custody of such persons and estates.

100. Copies of all specifications, drawings, and amendments left at the Patent Office after the commencement of this Act, printed for and sealed with the seal of the Patent Office, shall be transmitted to the Edinburgh Museum of Science and Art, and to the Enrolments Office of the Chancery Division in Ireland, and to the Rolls Office in the Isle of Man, within twenty-one days after the

^{Transmission of certified printed copies of specifications, etc.}

same shall respectively have been accepted or allowed at the Patent Office; and certified copies of or extracts from any such documents shall be given to any person requiring the same on payment of the prescribed fee;¹ and any such copy or extract shall be admitted in evidence in all Courts in Scotland and Ireland and in the Isle of Man without further proof or production of the originals.

¹ See rule 76, Patents Rules, page 209. The prescribed fee is stated in the first schedule to Patents Rules, Nos. 33, 34, & 35, page 217.

Power for
Board of
Trade to
make
general
rules for
classifying
goods and
regulating
business of
patent
office.

101. (1.) The Board of Trade may from time to time make such general rules (a) and do such things as they think expedient, subject to the provisions of this Act¹—

- (a.) For regulating the practice of registration under this Act :
- (b.) For classifying goods for the purposes of designs and trade marks :
- (c.) For making or requiring duplicates of specifications, amendment, drawings, and other documents :
- (d.) For securing and regulating the publishing and selling of copies, at such prices and in such manner as the Board of Trade think fit, of specifications, drawings, amendments, and other documents :
- (e.) For securing and regulating the making, printing, publishing, and selling of indexes to,

and abridgments of, specifications and other documents in the Patent Office ; and providing for the inspection of indexes and abridgments and other documents :

(f.) For regulating (with the approval of the Treasury) the presentation of copies of Patent Office publications to patentees and to public authorities, bodies, and institutions at home and abroad :

(g.) Generally for regulating the business of the Patent Office, and all things by this Act placed under the direction or control of the Comptroller, or of the Board of Trade.

(2.) Any of the forms in the first schedule to this Act may be altered or amended by rules made by the Board as aforesaid.

(3.) General rules may be made under this section at any time after the passing of this Act, but not so as to take effect before the commencement of this Act, and shall (subject as hereinafter mentioned) be of the same effect as if they were contained in this Act, and shall be judicially noticed.

(4.) Any rules made in pursuance of this section shall be laid before both Houses of Parliament, if Parliament be in session at the time of making thereof, or, if not, then as soon as practicable after the beginning of the then next session of Parliament, and they shall also be advertised twice in the official journal to be issued by the Comptroller.

(5.) If either House of Parliament, within the next forty days after any rules have been so laid before such House, resolve that such rules or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such rules or rule or to the making of any new rules or rule.

¹ Rule 78 of the Patents Rules repeals all rules made by the Lord Chancellor, without prejudice to pending applications, see page 210. Rule 60 of the Trade Marks Rules (page 286), and rule 37 of the Designs Rules (page 252), repeal prior rules without prejudice to their past operation.

**Existing
rules.**

(a) See s. 115 for saving for existing rules.

In accordance with the powers conferred on the Board of Trade by this section, general rules have been issued: (1) Rules relating to applications for patents for inventions and proceedings thereon, and registration of patents; with list of fees and rules for appeals to the law officers (the power of the law officers to make rules is given by s. 38 of the Act, see page 83). (2) Rules for the registration of designs, with classification of goods and table of fees, see pp. 253-255. (3) Rules for the registration of trademarks, with classification of goods and tables of fees, see page 264.

**Annual
reports of
comp-
troller.**

102. The Comptroller shall, before the first day of June in every year, cause a report respecting the execution by or under him of this Act to be laid before both Houses of Parliament, and therein shall include for the year to which each report relates all general rules made in that year under or for the purposes of this Act, and an account of all fees, salaries, and allowances, and other money received and paid under this Act.

International and Colonial Arrangements.

103. (1.) If Her Majesty is pleased to make any arrangements with the government or governments of any foreign state or states for mutual protection of inventions, designs, and trade marks, or any of them, then any person who has applied for protection for any invention, design, or trade mark in any such state, shall be entitled to a patent for his invention or to registration of his design or trade mark (as the case may be) under this Act, in priority to other applicants; and such patent or registration shall have the same date as the date of the protection obtained in such foreign state (a).

Inter-
national
arrange-
ments for
protection
of inven-
tions,
designs,
and trade
marks.

Provided that his application is made, in the case of a patent within seven months, and in the case of a design or trade mark within four months, from his applying for protection in the foreign state with which the arrangement is in force (b).

Provided that nothing in this section contained shall entitle the patentee or proprietor of the design or trade mark to recover damages for infringements happening prior to the date of the actual acceptance of his complete specification, or the actual registration of his design or trade mark in this country, as the case may be.

(2.) The publication in the United Kingdom or the Isle of Man during the respective periods

aforesaid of any description of the invention, or the use therein during such periods of the invention, or the exhibition or use therein during such periods of the design, or the publication therein during such periods of a description or representation of the design, or the use therein during such periods of the trade mark, shall not invalidate the patent which may be granted for the invention, or the registration of the design or trade mark :

(3.) The application for the grant of a patent (*c*), or the registration of a design (*d*), or the registration of a trade mark (*e*), under this section, must be made in the same manner as an ordinary application under this Act: Provided that, in the case of trade marks, any trade mark the registration of which has been duly applied for in the country of origin may be registered under this Act :

(4.) The provisions of this section shall apply only in the case of those foreign states with respect to which Her Majesty shall from time to time by Order in Council declare them to be applicable, and so long only in the case of each state as the Order in Council shall continue in force with respect to that state (*f*).

Foreign
inventors.

(*a*) Inventors, subjects of states with whom this country has entered into these international arrangements, will,—

(*b*) *Provided their applications are made within the prescribed time*, be on a much better footing for obtaining patents in this country, especially in the following respects : (1) Importers of their inventions into this country will not be able

to supplant them in obtaining letters patent ; for a patent so obtained cannot be supported as against a first and true inventor who has complied with the above conditions. (2) The publication of the public use of the invention in this country during the interval between the application for a patent in their own country and in this will not be a ground for refusing or invalidating the letters patent. For recent cases showing the inconvenience of the present law in this respect, see *Plimpton v. Spiller*, 6 Ch. D. 412 ; *Plimpton v. Malcolmson*, 3 Ch. D. 531.

(c) See ss. 4 & 5.

(d) See ss. 47 & 48.

(e) See ss. 64, 72, & 73.

(f) The provisions of this section are extended to the colonies. See s. 104.

104. (1.) Where it is made to appear to Her Majesty that the legislature of any British possession has made satisfactory provision for the protection of inventions, designs, and trade marks, patented or registered in this country, it shall be lawful for Her Majesty from time to time, by Order in Council, to apply the provisions of the last preceding section, with such variations or additions (if any) as to Her Majesty in Council may seem fit, to such British possession (a).

Provision
for Colonies
and India.

(2.) An Order in Council under this Act shall, from a date to be mentioned for the purpose in the Order, take effect as if its provisions had been contained in this Act ; but it shall be lawful for Her Majesty in Council to revoke any Order in Council made under this Act.

(a) See s. 104 and notes.

Offences.

Penalty on
falsely re-
presenting
articles to be
patented.

105. (1.) Any person who represents that any article sold by him is a patented article, when no patent has been granted for the same (*a*), or describes any design or trade mark applied to any article sold by him as registered which is not so, shall be liable for every offence on summary conviction (*b*) to a fine not exceeding five pounds.

(2.) A person shall be deemed, for the purposes of this enactment, to represent that an article is patented or a design or a trade mark is registered, if he sells the article with the word "patent," "patented," "registered," or any word or words expressing or implying that a patent or registration has been obtained for the article stamped, engraved, or impressed on, or otherwise applied to, the article.

If patent
has lapsed.

(*a*) If a patent has been granted, though at the time of the representation it has lapsed, the person so describing the article will not, it seems, be liable to pay this penalty. *Myers and others v. Baker and another*, 3 H. & N. 802; *Cheavin v. Walker*, 5 Ch. D. 580; *The Leather Cloth Co. v. The American Cloth Co.*, 11 H. L. C. 523.

The penalties imposed by the Merchandise Marks Act, 1862, are still in force. See Introduction.

(*b*) For summary conviction in Scotland, see s. 108.

Penalty on
unauthor-
ised as-
sumption of
Royal arms.

106. Any person who, without the authority of Her Majesty (*a*), or any of the Royal Family, or of any Government department, assumes or uses in connection with any trade, business, calling, or profession, the Royal arms, or arms so nearly resembling the same as to be calculated to deceive, in

such a manner as to be calculated to lead other persons to believe that he is carrying on his trade, business, calling, or profession, by or under such authority as aforesaid, shall be liable on summary conviction to a fine not exceeding twenty pounds.

See ss. 72 & 73 for restrictions on registration.

Restrictions
on registra-
tion.

This provision is new, and affects many shopkeepers and others, who are at present without authority using the Royal arms.

(a) Representations of the Queen, or any member of the royal family, or foreign sovereign; royal or national arms, crests, or mottoes; representations of the royal crown, or national flag; arms of countries, cities, and boroughs in the United Kingdom, cannot be registered as new trade marks.

Scotland; Ireland; etc.

107. In any action for infringement of a patent in Scotland the provisions of this Act, with respect to calling in the aid of an assessor, shall apply, and the action shall be tried without a jury, unless the court shall otherwise direct; but otherwise nothing shall affect the jurisdiction and forms of process of the courts in Scotland in such an action or in any action or proceeding respecting a patent hitherto competent to those courts.

Saving for
courts in
Scotland.

For the purposes of this section, "Court of Appeal" shall mean any court to which such action is appealed.

108. In Scotland any offence under this Act declared to be punishable on summary conviction may be prosecuted in the Sheriff Court.

Summary
proceedings
in Scotland.

Proceed-
ings for re-
vocation of
patent in
Scotland.

109. (1.) Proceedings in Scotland for revocation of a patent shall be in the form of an action of reduction at the instance of the Lord Advocate, or at the instance of a party having interest with his concurrence, which concurrence may be given on just cause shown only.

(2.) Service of all writs and summonses in that action shall be made according to the forms and practice existing at the commencement of this Act.

Reservation
of remedies
in Ireland.

110. All parties shall, notwithstanding anything in this Act, have in Ireland their remedies under, or in respect of, a patent as if the same had been granted to extend to Ireland only.

General
saving for
jurisdiction
of courts.

111. (1.) The provisions of this Act conferring a special jurisdiction on the Court as defined by this Act shall not, except so far as the jurisdiction extends, affect the jurisdiction of any Court in Scotland or Ireland in any proceedings relating to patents, or to designs, or to trade marks; and with reference to any such proceedings in Scotland, the term "the Court" shall mean any Lord Ordinary of the Court of Session, and the term "Court of Appeal" shall mean either division of the said Court; and with reference to any such proceedings in Ireland, the terms "the Court" and "the Court of Appeal" respectively mean the High Court of Justice in Ireland and Her Majesty's Court of Appeal in Ireland.

(2.) If any rectification of a register under this Act is required in pursuance of any proceeding in a court in Scotland or Ireland, a copy of the order, decree, or other authority for the rectification, shall be served on the comptroller, and he shall rectify the register accordingly.

Patents, Designs, and Trade Marks Act, 1883.

112. This Act shall extend to the Isle of Man, Isle of Man.
and—

- (a.) Nothing in this Act shall affect the jurisdiction of the courts in the Isle of Man, in proceedings for infringement or in any action or proceeding respecting a patent, design, or trade mark competent to those courts ;
- (b.) The punishment for a misdemeanor under this Act in the Isle of Man shall be imprisonment for any term not exceeding two years, with or without hard labour, and with or without a fine not exceeding one hundred pounds, at the discretion of the court ;
- (c.) Any offence under this Act committed in the Isle of Man which would in England be punishable on summary conviction may be prosecuted, and any fine in respect thereof recovered at the instance of any person aggrieved, in the manner in which offences punishable on summary conviction may for the time being be prosecuted.

Repeal ; Transitional Provisions ; Savings.

Repeal and
saving for
past opera-
tion of re-
pealed
enactments,
etc.

113. The enactments described in the Third Schedule to this Act are hereby repealed. But this repeal of enactments shall not—

- (a.) Affect the past operation of any of those enactments, or any patent, or copyright, or right to use a trade mark granted or acquired, or application pending, or appointment made, or compensation granted, or order or direction made or given, or right, privilege, obligation, or liability acquired, accrued, or incurred, or anything duly done or suffered under or by any of those enactments before or at the commencement of this Act ; or
- (b.) Interfere with the institution or prosecution of any action or proceeding, civil or criminal, in respect thereof, and any such proceeding may be carried on as if this Act had not been passed ; or
- (c.) Take away or abridge any protection or benefit in relation to any such action or proceeding.

The provisions of this Act, except those relating to compulsory licenses and the power to bind the Crown, extend to all patents granted before the commencement of this Act, or on applications then pending, in substitution for such enactments as would have applied thereto if this Act had not been passed. See s. 45.

114. (1.) The registers of patents and of proprietors kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of patents kept under this Act (a). Former registers to be deemed continued.

(2.) The registers of designs (b) and of trade marks kept under any enactment repealed by this Act shall respectively be deemed parts of the same book as the register of designs and the register of trade marks kept under this Act.

(a) The Board of Trade have power to make general rules for regulating the practice of registration under this Act. See s. 101.

(b) The register of ornamental designs (5 & 6 Vict. c. 100) and the register of useful designs (6 & 7 Vict. c. 9).

115. All general rules made by the Lord Chancellor or by any other authority under any enactment repealed by this Act, and in force at the commencement of this Act, may at any time after the passing of this Act be repealed, altered, or amended by the Board of Trade,¹ as if they had been made by the Board under this Act, but so that no such repeal, alteration, or amendment shall take effect before the commencement of this Act; and, subject as aforesaid, such general rules shall, so far as they are consistent with and are not superseded by this Act, continue in force as if they had been made by the Board of Trade under this Act (a). Saving for existing rules.

¹ The Patents Rules made under the Patent Law

Amendment Acts have been repealed by rule 78 of the Patents Rules. See page 210. The Trade Marks Rules made by the Lord Chancellor under the Trade Marks Registration Act, 1875, have been repealed by the Trade Marks Rules, No. 60, p. 286.

The Designs Rules in force on the 31st day of December, 1883, have been repealed and new ones issued. See Designs Rules, No. 37, p. 252.

(a) See s. 101.

Saving for
prerogative.

116. Nothing in this Act shall take away, abridge, or prejudicially affect the prerogative of the Crown (a) in relation to the granting of any letters patent, or to the withholding of a grant thereof.

(a) See s. 27 and notes.

General Definitions.

General
definitions.

117. (1.) In and for the purposes of this Act, unless the context otherwise requires—

“Person” includes a body corporate:

“The Court” means (subject to the provisions for Scotland, Ireland, and the Isle of Man) Her Majesty’s High Court of Justice in England:

“Law Officer” means Her Majesty’s Attorney-General or Solicitor-General for England:

“The Treasury” means the Commissioners of Her Majesty’s Treasury:

“Comptroller” means the Comptroller-General of Patents, Designs, and Trade Marks:

“Prescribed” means prescribed by any of the schedules to this Act, or by general rules under or within the meaning of this Act:

“British possession” means any territory or place situate within Her Majesty’s dominions, and not being or forming part of the United Kingdom, or of the Channel Islands, or of the Isle of Man, and all territories and places under one legislature, as hereinafter defined, are deemed to be one British possession for the purposes of this Act :

“Legislature” includes any person or persons who exercise legislative authority in the British possession ; and where there are local legislatures as well as a central legislature, means the central legislature only.

In the application of this Act to Ireland, “summary conviction” means a conviction under the Summary Jurisdiction Acts, that is to say, with reference to the Dublin Metropolitan Police District the Acts regulating the duties of justices of the peace and of the police for such district, and elsewhere in Ireland the Petty Sessions (Ireland) Act, 1851, and any Act amending it.

For definitions of “patent,” “patentee,” and “invention,” Other definitions.
see s. 46.

For definitions of “design,” “copyright in design,” “proprietor of design,” see ss. 61 & 62.

For definitions of “design,” “trade mark,” see s. 64.

SCHEDULES TO ACT.

THE FIRST SCHEDULE.

Section 5.

£1
STAMP.

FORMS OF APPLICATION, &c.

FORM A.

Form of Application for Patent.¹

(a) Here insert name, address, and calling of inventor.
(b) Here insert title of invention.

I (a), *John Smith*, of 29, *Perry Street, Birmingham*, in the county of *Warwick*, *Engineer*, do solemnly and sincerely declare that I am in possession of an invention for (b) "*Improvements in Sewing Machines*;" that I am the true and first inventor thereof; and that the same is not in use by any other person or persons to the best of my knowledge and belief; and I humbly pray that a patent may be granted to me for the said invention.

And I make the above solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

(c) Signature of inventor.

(c) *John Smith.*

Declared at *Birmingham*, in the county of *Warwick*, this day of 18 .

Before me,

(d) *James Adams,*
Justice of the Peace.

(d) Signature and title of the officer before whom the declaration is made.

NOTE.—Where the above declaration is made out of the United Kingdom, the words "and by virtue of the Statutory Declarations Act, 1835," must be omitted; and the declaration must be made before a British Consular officer, or where it is not reasonably practicable to make it before such officer, then before a public officer duly authorised in that behalf.

¹ See second schedule, forms A and A 1, Patents Rules. See rules 5 & 6 (1).

FORM B.

Form of Provisional Specification.²

IMPROVEMENTS IN SEWING MACHINES (a).

I (b), *John Smith*, of 29, *Perry Street, Birmingham*, in the county of *Warwick, Engineer*, do hereby declare the nature of my invention for "*Improvements in Sewing Machines*," to be as follows (c) :—

* * * * *

Dated this day of 18 .

(d) *John Smith.*

NOTE.—No stamp is required on this document.

² See second schedule, form B, Patents Rules. See rules 5 & 6 (2).

(a) Here insert title as in declaration.

(b) Here insert, name, address, and calling of inventor as in declaration.

(c) Here insert short description of invention.

(d) Signature of inventor.

FORM C.

Form of Complete Specification.³

IMPROVEMENTS IN SEWING MACHINES (a).

I (b), *John Smith*, of 29, *Perry Street, Birmingham*, in the county of *Warwick, Engineer*, do hereby declare the nature of my invention for "*Improvements in Sewing Machines*," and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement (c) :

* * * * *

Having now particularly described and ascertained the nature of my said invention and in what manner the same is to be performed, I declare that what I claim is (d)—

1.

2.

3. &c.

(e) *John Smith.*

Dated this day of 18 .

³ See second schedule to Patents Rules, form C.

(a) Here insert title, as in declaration.

(b) Here insert name, address, and calling of inventor, as in declaration.

(c) Here insert full description of invention.

(d) Here state distinctly the features of novelty claimed.

(e) Signature of inventor.



FORM D.

*Form of Patent.*¹The
address.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith :
To all to whom these presents shall come greeting :

Recitals.

Whereas John Smith, of 29, Perry Street, Birmingham, in the county of Warwick, Engineer, hath by his solemn declaration represented unto us that he is in possession of an invention for "Improvements in Sewing Machines," that he is the true and first inventor thereof, and that the same is not in use by any other person to the best of his knowledge and belief :

And whereas the said inventor hath humbly prayed that we would be graciously pleased to grant unto him (hereinafter together with his executors, administrators, and assigns, or any of them, referred to as the said patentee) our Royal Letters Patent for the sole use and advantage of his said invention :

And whereas the said inventor hath by and in his complete specification particularly described the nature of his invention :

And whereas we being willing to encourage all inventions which may be for the public good, are graciously pleased to condescend to his request :

The grant
of sole
privilege.

KNOW YE, therefore, that We, of our especial grace, certain knowledge, and mere motion do by these presents, for us, our heirs and successors, give and grant unto the said patentee our especial license, full power, sole privilege, and authority, that the said patentee by himself, his agents, or licensees, and no others, may at all times hereafter during the terms of years herein mentioned, make, use, exercise, and vend the said invention within our United Kingdom of Great Britain and Ireland, and Isle of Man, in such manner as to him or them may seem meet, and that the said patentee *shall have and*

Habendum.

enjoy the whole profit and advantage from time to time accruing by reason of the said invention, during the term of fourteen years from the date hereunder written of these presents : And to the end that the said patentee may have and enjoy the sole use and exercise and the full benefit of the

said invention, We do by these presents for us our heirs and successors, strictly command all our subjects whatsoever within our United Kingdom of Great Britain and Ireland, and the Isle of Man, that they do not at any time during the continuance of the said term of fourteen years either directly or indirectly make use of or put in practice the said invention, or any part of the same, nor in anywise imitate the same, nor make or cause to be made any addition thereto or subtraction therefrom, whereby to pretend themselves the inventors thereof, without the consent, license, or agreement of the said patentee in writing under his hand and seal, on pain of incurring such penalties as may be justly inflicted on such offenders for their contempt of this our Royal command, and of being answerable to the patentee according to law for his damages thereby occasioned: *Provided* that these our letters patent are on this condition, that, if at any time during the said term it be made to appear to us, our heirs, or successors, or any six or more of our Privy Council, that this our grant is contrary to law, or prejudicial or inconvenient to our subjects in general, or that the said invention is not a new invention as to the public use and exercise thereof within our United Kingdom of Great Britain and Ireland, and Isle of Man, or that the said patentee is not the first and true inventor thereof within this realm as aforesaid, these our letters patent shall forthwith determine, and be void to all intents and purposes, notwithstanding anything hereinbefore contained: *Provided also*, that if the said patentee shall not pay all fees by law required to be paid in respect of the grant of these letters patent, or in respect of any matter relating thereto at the time or times, and in manner for the time being by law provided; and *also* if the said patentee shall not supply or cause to be supplied, for our service all such articles of the said invention as may be required by the officers or commissioners administering any department of our service in such manner, at such times, and at and upon such reasonable prices and terms as shall be settled in manner for the time being by law provided, then, and in any of the said cases, these our letters patent, and all privileges and advantages

Prohibition
of use by
others.

Conditions
of the grant.

whatever hereby granted shall determine and become void,
notwithstanding anything hereinbefore contained : *Provided also*
also that nothing herein contained shall prevent the granting
of licenses in such manner and for such considerations as they
may by law be granted : And *lastly*, we do by these presents
for us, our heirs and successors, grant unto the said patentee
that these our letters patent shall be construed in the most
beneficial sense for the advantage of the said patentee. In
witness whereof we have caused these our letters to be made
patent this one thousand eight hundred
and and to be sealed as of the
one thousand eight hundred and



¹ The form of patent, although shorter, is to the same effect as that required under the 15th and 16th Vict. c. 83. Some express conditions are not inserted in the form of patent, but appear in the Act; as, for instance, the words, "Provided likewise nevertheless, and these our letters patent are on the express condition, that if the said A. B., his executors or administrators, shall not particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, by an instrument in writing under his, or their, or one of their hands and seals, and cause the same to be filed in the Great Seal Patent Office within six calendar months next and immediately after the date of these our letters patent," do not appear in the above form; but s. 5, sub. 4, enacts that a complete specification, whether left on application or subsequently, must particularly describe and ascertain the nature of the invention, and in what manner it is to be performed. See page 13. The words used above, "and whereas the inventor hath by and in his complete specification particularly described the nature of his said invention," seem to point to the view that when a patent is once granted, the patent cannot be attacked on the ground that the invention is not particularly described; but this may not prove to be the case, because a patent may be revoked on any of the grounds on which at the commencement of this Act proceedings might have been taken by a writ of *scire facias*. See s. 26, sub. 3.

FORM E.

Section 47.

*Form of Application for Registration of Design.*¹

day of 18 .

You are hereby requested to register the accompanying

Design, in Class

in the name of (a)

of

who claims to be the Proprietor thereof, and to return the same

to

(a) Here insert legibly the name and address of individual or firm.

Statement of nature of Design

Registration Fees enclosed £ „ s.

To the Comptroller,

Patent Office, 25, Southamptn Buildings, Chancery Lane,
W.C.

(Signed)

¹ Rule 4 of the Designs Rules requires the application for the registration of a design to be made in form E in the second schedule thereto. See page 256.

Section 62.

FORM F.

*Form of Application for Registration of Trade Mark.*¹

(One representation to be fixed within this square, and two others on separate sheets of foolscap of same size.)

(Representations of a larger size may be folded, but must be mounted upon linen and affixed hereto.)

You are hereby requested to register the accompanying trade mark, [*In Class —Iron in bars, sheets, and plates; in Class —Steam Engines and Boilers; and in Class —Warming Apparatus*], in the name of (a) , who claims to be the proprietor thereof.

(a) Here insert legibly the name, address, and business of the individual or firm.

Registration Fees enclosed £ , s.

To the Comptroller,
Patent Office, 25, *Southampton Buildings, Chancery Lane, W.C.*

(Signed)

Note.—If the trade mark has been in use before August 13, 1875, state length of user.

¹ This form is altered and amended by the substitution therefor of the form F in the second schedule to the Trade Marks Rules. See page 290.

THE SECOND SCHEDULE.¹*Fees on Instruments for obtaining Patents, and Renewal.*

Section 24.

(a.) *Up to Sealing.*

	£	s.	d.	£	s.	d.
On application for provisional protection	1	0	0			
On filing complete specification	3	0	0			
	<hr/>			4	0	0
<i>or</i>						
On filing complete specification with first application	4	0	0			

(b.) *Further before end of four years from date of patent.*

On certificate of renewal	50	0	0
---------------------------	----	---	---

(c.) *Further before end of seven years, or in the case of patents granted after the commencement of this Act, before the end of eight years from date of patent.*

On certificate of renewal	100	0	0
---------------------------	-----	---	---

Or in lieu of the fees of £50 and £100 the following annual fees:

Before expiration of 4th year from date of patent	10	0	0
" " 5th " "	10	0	0
" " 6th " "	10	0	0
" " 7th " "	10	0	0
" " 8th " "	15	0	0
" " 9th " "	15	0	0
" " 10th " "	20	0	0
" " 11th " "	20	0	0
" " 12th " "	20	0	0
" " 13th " "	20	0	0

¹ See rule 4.

THE THIRD SCHEDULE.

Enactments Repealed.

21 James I. c. 3. [1623.]	The Statute of Monopolies. In part; namely,— Sections ten, eleven, and twelve.
5 & 6 Will. 4. c. 62. [1835.] In part.	The Statutory Declarations Act, 1835. In part; namely,— Section eleven.
5 & 6 Will. 4. c. 83. [1835.]	An Act to amend the law touching letters patent for inventions.
2 & 3 Vict. c. 67. [1839.]	An Act to amend an Act of the fifth and sixth years of the reign of King William the Fourth, intituled "An Act to amend the law touching letters patent for inventions."
5 & 6 Vict. c. 100. [1842.]	An Act to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
6 & 7 Vict. c. 65. [1843.]	An Act to amend the laws relating to the copyright of designs.
7 & 8 Vict. c. 69. (a) [1844.] In part.	An Act for amending an Act passed in the fourth year of the reign of His late Majesty, intituled "An Act for the better administration of justice in His Majesty's Privy Council, and to extend its jurisdiction and powers." In part; namely,— Sections two to five, both in- cluded.

(a). *Note.*—Sections six and seven of this Act are repealed by the Statute Law Revision (No. 2) Act, 1874.

13 & 14 Vict. c. 104. [1850.]	An Act to extend and amend the Acts relating to the copyright of designs.
15 & 16 Vict. c. 83. [1852.]	The Patent Law Amendment Act, 1852.
16 & 17 Vict. c. 5. [1853.]	An Act to substitute stamp duties for fees on passing letters patent for inventions, and to provide for the purchase for the public use of certain indexes of specifications.
16 & 17 Vict. c. 115. [1853.]	An Act to amend certain provisions of the Patent Law Amendment Act, 1852, in respect of the transmission of certified copies of letters patent and specifications to certain offices in Edinburgh and Dublin, and otherwise to amend the said Act.
21 & 22 Vict. c. 70. [1858.]	An Act to amend the Act of the fifth and sixth years' of Her present Majesty to consolidate and amend the laws relating to the copyright of designs for ornamenting articles of manufacture.
22 Vict. c. 13. [1859.]	An Act to amend the law concerning patents for inventions with respect to inventions for improvements in instruments and munitions of war.
24 & 25 Vict. c. 73. [1861.]	An Act to amend the law relating to the copyright of designs.
28 & 29 Vict. c. 3. [1865.]	The Industrial Exhibitions Act, 1865.
33 & 34 Vict. c. 27. [1870.]	The Protection of Inventions Act, 1870.

33 & 34 Vict. c. 97. [1870.]	The Stamp Act, 1870. In part ; namely,— Section sixty-five, and in the Schedule the words and figures. “Certificate of the registration of a design £5 0 0 And see section 65.”
38 & 39 Vict. c. 91. [1875.]	The Trade Marks Registration Act, 1875.
38 & 39 Vict. c. 93. [1875.]	The Copyright of Designs Act, 1875.
39 & 40 Vict. c. 33. [1876.]	The Trade Marks Registration Amend- ment Act, 1876.
40 & 41 Vict. c. 37. [1877.]	The Trade Marks Registration Exten- sion Act, 1877.
43 & 44 Vict. c. 10. [1880.]	The Great Seal Act, 1880. In part ; namely,— Section five.
45 & 46 Vict. c. 72. [1882.]	The Revenue, Friendly Societies, and National Debt Act, 1882. In part ; namely,— Section sixteen.

RULES AND REGULATIONS*

OF THE

PRIVY COUNCIL.

[RULES to be observed in proceedings for the extension of the term of letters patent before the Judicial Committee of the Privy Council under the Act of 5 & 6 Will. IV. c. 83 (repealed) intituled "An Act to Amend the Law touching Letters Patent for Inventions."]

1. A party intending to apply by petition under section 2 of the said Act, shall give public notice by advertising in the *London Gazette* three times and in three London papers, and three times in some country papers published in the town where or near to which he carries on any manufacture of anything made according to his specification, or near to or in which he resides in case he carries on no such manufacture, or published in the county where he

* Until new rules are made by Her Majesty in Council these rules remain in force. See Patents, Designs, and Trade Marks Act, 1883, s. 25, sub. 6.

carries on such manufacture or where he lives, in case there shall not be any paper published in such town that he intends to petition His Majesty under the said section, and shall in such advertisements state the object of such petition, and give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his petition (which day shall not be less than four weeks from the date of the publication of the last of the advertisements to be inserted in the *London Gazette*), and that on or before such day notice must be given of any opposition intended to be made to the petition; and any person intending to oppose the said application shall lodge notice to that effect at the Council Office on or before such day so named in the said advertisement, and having lodged such notice shall be entitled to have from the petitioner four weeks' notice of the time appointed for the hearing.

2. A party intending to apply by petition under section 4 of the said Act shall, in the advertisements directed to be published by the said section give notice of the day on which he intends to apply for a time to be fixed for hearing the matter of his petition (which day shall not be less than four weeks from the date of the publication of the last of the advertisements to be inserted in the *London Gazette*); and that on or before such day, caveats must be entered, and any person intending to enter a caveat shall enter the same at the Council Office

on or before such day so named in the said advertisements, and having entered such caveat shall be entitled to have from the petitioner four weeks' notice of the time appointed for the hearing.

3. Petitions under sections 2 & 4 of the said Act must be presented within one week from the insertion of the last of the advertisements required to be published in the *London Gazette*.

4. All petitions must be accompanied with affidavits of advertisements having been inserted according to the provisions of section 4 of the said Act, and the first and second of these rules and the matters in such affidavits may be disputed by the parties opposing upon the hearing of the petitions.

5. All persons entering caveats under section 4 of the said Act, and all parties to any former suit or action touching letters patent in respect of which petitions shall have been presented under section 2 of the said Act, and all persons lodging notices of opposition under the first of these rules shall respectively be entitled to be served with copies of petitions presented under the said sections, and no application to fix a time for hearing shall be made without affidavit of such service.

6. All parties served with petitions shall lodge at the Council Office within a fortnight after such

service notice of the grounds of their objections to the granting of the prayers of such petitions.

7. Parties may have copies of all papers lodged in respect of any application under the said Act, at their own expense.

8. The Registrar of the Privy Council or other officer to whom it may be referred to tax the costs incurred in the matter of any petition presented under the said Act, shall allow or disallow, in his discretion, all payments made to persons of science or skill, examined as witnesses to matters of opinion chiefly.

9. A party applying for an extension of a patent, under section 4 of the said Act, must lodge at the Council Office six printed copies of the specification, and also four copies of the balance sheet of expenditure and receipts relating to the patent in question, which accounts are to be proved on oath before the Lords of the Committee at the hearing. In the event of the applicant's specification not having been printed, and if the expense of making six copies of any drawing therein contained or referred to would be considerable, the lodging of two copies only of such specification and drawing will be deemed sufficient.

All copies mentioned in this rule must be lodged not less than one week before the day fixed for hearing the application.

The Judicial Committee will hear the Attorney-General or other counsel on behalf of the Crown against granting any application made under either the second or fourth section of the said Act in case it shall be thought fit to oppose the same on such behalf.

RULES

RELATING TO APPLICATIONS FOR

PATENTS FOR INVENTIONS AND PROCEEDINGS

THEREON, AND REGISTRATION OF PATENTS ;

WITH

LIST OF FEES,

AND

RULES FOR APPEALS TO THE LAW OFFICERS.

By virtue of the provisions of the Patents Designs and Trade Marks Act, 1883, the Board of Trade do hereby make the following rules (a) :

(a) See s. 101, page 156.

Short Title.

Short title. 1. These rules may be cited as the Patents Rules, 1883.

Commencement.

**Commence-
ment.** 2. These rules shall come into operation from and immediately after the 31st day of December, 1883 (b).

(b) For saving as to existing rules, see s. 115, page 167.

Interpretation.

3. In the construction of these rules, any words herein used defined by the said Act shall have the meanings thereby assigned to them respectively (c). <sup>Interpreta-
tion.</sup>

(c) See s. 117 for definitions of "person," "court," "law officer," "the Treasury," "comptroller," "prescribed," &c. See s. 46 for definitions of "patent," "patentee," and "invention."

Fees.

4. The fees to be paid under the above-mentioned ^{Fees.} Act, in addition to the fees mentioned in the second schedule thereto, so far as it relates to patents, shall be those specified in the list of fees in the first schedule to these rules (d).

(d) See page 215.

Forms.

5. The forms A, B, and C in the first schedule <sup>Forms.
Alterations.</sup> to the said Act shall be altered or amended by the substitution therefor respectively of the forms A, A1, B, and C in the second schedule hereto (e).

(e) See pp. 219-223. For forms in first schedule to Act, see pp. 170, 171.

6. (1.) An application for a patent shall be made <sup>Applica-
tion.</sup> either in the form A or the form A1 set forth in the second schedule hereto, as the case may be.

(2.) The form B in such schedule of provisional <sup>Specifica-
tion.</sup> specification and the form C of complete specification shall respectively be used.

Other
forms.

(3.) The remaining forms set forth in such schedule may, as far as they are applicable, be used in any proceedings under these rules.

General.

Hours of
business.

7. The Patent Office shall be open to the public every weekday during the hours of ten and four, except on the days and times following:

Christmas Day.

Good Friday.

The day observed as Her Majesty's birthday.

The days observed as days of public fast or thanksgiving, or as holidays at the Bank of England (f).

(f) See s. 98, page 154.

Agency.

8. An application for a patent must be signed by the applicant; but all other communications between the applicant and the comptroller, and all attendances by the applicant upon the comptroller, may be made by or through an agent duly authorised to the satisfaction of the comptroller, and, if he so require, resident in the United Kingdom.

Statement
of address.

9. The application shall be accompanied by a statement of an address to which all notices, requisitions, and communications of every kind may be made by the comptroller, or by the Board of Trade, and such statement shall thereafter be binding upon the applicant, unless and until a substituted statement of address shall be furnished by him to the

comptroller. He may in any particular case require that the address mentioned in this rule be in the United Kingdom.

10. All documents and copies of documents sent to or left at the Patent Office or otherwise furnished to the comptroller or to the Board of Trade shall be written or printed in large and legible characters in the English language upon strong wide-ruled paper (on one side only), of a size of 13 inches by 8 inches, leaving a margin of two inches on the left-hand part thereof, and the signature of the applicants or agents thereto must be written in a large and legible hand. Duplicate documents shall at any time be left, if required by the comptroller (*g*). Size, etc., of documents.

(*g*) See s. 5, subs. 2-5, page 13.

11. Before exercising any discretionary power given to the comptroller by the said Act adversely to the applicant for a patent or for amendment of a specification, the comptroller shall give ten days' notice, or such longer notice as he may think fit, to the applicant of the time when he may be heard personally or by his agent before the comptroller (*h*). Exercise of discretionary power by comptroller. Notice of hearing.

(*h*) See s. 94, page 152.

12. Within five days from the date when such notice would be delivered in the ordinary course of post, or such longer time as the comptroller may appoint in such notice, the applicant shall notify to Notice by applicant.

the comptroller whether or not he intends to be heard upon the matter (i).

(i) For form of application for hearing by comptroller, see form E, page 225.

Comptroller
may require
statements,
etc.

13. Whether the applicant desires to be heard or not, the comptroller may at any time require him to submit a statement in writing within a time to be notified by the comptroller, or to attend before him and make oral explanations with respect to such matters as the comptroller may require.

Decision to
be notified
to parties.

14. The decision or determination of the comptroller in the exercise of any such discretionary power as aforesaid shall be notified by him to the applicant, and any other person affected thereby.

Definition of
"applicant."

15. The term "applicant" in rules 11, 12, & 13 shall include an applicant whose specification bears a title the same as or similar to that of the specification of a prior applicant, and has been reported on by the examiner.

Prior and
second
applicant
may attend
hearing.

16. Such prior and second applicant respectively may attend the hearing of the question whether the invention comprised in both applications is the same; but neither party shall be at liberty to inspect the specification of the other.

Industrial
or inter-
national
exhibitions.

17. Any person desirous of exhibiting an invention at an industrial or international exhibition, or of publishing any description of the invention during the period of the holding of the exhibition

or of using the invention for the purpose of the exhibition in the place where the exhibition is held shall, after having obtained from the Board of Trade a certificate that the exhibition is an industrial or international one, give to the comptroller seven days' notice of his intention to exhibit, publish, or use the invention, as the case may be (*j*).

For the purpose of identifying the invention in the event of an application for a patent being subsequently made, the applicant shall furnish to the comptroller a brief description of his invention accompanied, if necessary, by drawings, and such other information as the comptroller may in each case require.

(*j*) Exhibition at industrial or international exhibitions not to prejudice patent rights. See s. 39, page 84. For form of notice of intended exhibition of unpatented invention, see form O, page 236.

18. Any document for the amending of which no special provision is made by the said Act may be amended, and any irregularity in procedure, which, in the opinion of the comptroller, may be obviated without detriment to the interests of any person, may be corrected, if and on such terms as the comptroller may think fit (*k*).

(*k*) In rectification of registers by court, see s. 90, page 148. For power of comptroller to correct clerical errors, see s. 91, page 149. For form of request for correction of clerical errors, see form P, page 237.

19. Any application, notice, or other document, authorised or required to be left, made, or given

Power of
amend-
ment, etc.
Documents
by post.

at the Patent Office or to the comptroller, or to any other person under these rules, may be sent by a prepaid letter through the post, and if so sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post (*l*).

(*l*) Sending applications and notices by post. See s. 97, page 153.

In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post.

Affidavits. 20. Affidavits may, except where otherwise prescribed by these rules, be used as evidence in any proceedings thereunder when sworn to in any of the following ways, viz. :—

- (a.) In the United Kingdom before any person authorised to administer oaths in the Supreme Court of Judicature, or before a justice of the peace for the county or place where it is sworn or made.
- (b.) In any place in the British dominions out of the United Kingdom before any court, judge, or justice of the peace, or any person authorised to administer oaths there in any Court.
- (c.) In any place out of the British dominions before a British minister, or person exercis-

ing the functions of a British minister, or a British consul, vice-consul, or other person exercising the functions of a British consul, or a notary public, or before a judge or magistrate.

21. Where any statutory declaration prescribed by these rules, or used in any proceedings thereunder, is made out of the United Kingdom, the words, "and by virtue of the Statutory Declaration Act, 1835," must be omitted, and the declaration shall (unless the context otherwise requires) be made in the manner prescribed in rule 20, subsection 3.

Statutory
declara-
tions.

*Application with Provisional or Complete
Specification.*

22. Applications for a patent sent by prepaid letter through the post shall, as far as may be practicable, be opened and numbered in the order in which the letters containing the same have been respectively delivered in the ordinary course of post (n).

Order of re-
cording ap-
plications.

Applications left at the Patent Office otherwise than through the post shall be in like manner numbered in the order of their receipt at the Patent Office.

(n) See s. 5, sub. 1. S. 97.

23. Where a person making application for a patent includes therein by mistake, inadvertence, or otherwise, more than one invention, he may,

Application
for separate
patents by
way of
amend-
ment.

after the refusal of the comptroller to accept such application, amend the same so as to apply to one invention only, and may make application for separate patents for each such invention accordingly (o).

Every such application shall bear the date of the first application, and shall, together therewith, be proceeded with in the manner prescribed by the said Act and by these rules as if every such application had been originally made on that date for one invention only.

(o) See s. 33, page 78.

Application
by repre-
sentative of
deceased in-
ventor.

24. An application for a patent by the legal representative of a person who has died possessed of an invention shall be accompanied by an official copy of or extract from his will or the letters of administration granted of his estate and effects in proof of the applicant's title as such legal representative (p).

(p) See s. 34, page 79.

Notice and
advertis-
ement of
acceptance.

25. On the acceptance of an application with a provisional or complete specification the comptroller shall give notice thereof to the applicant, and shall advertise such acceptance in the official journal of the Patent Office.

Inspection
on accept-
ance of com-
plete speci-
fication.

26. Upon the publication of such advertisement of acceptance in the case of an application with a complete specification, the application and specifi-

cation or specifications with the drawings (if any) may be inspected at the Patent Office upon payment of the prescribed fee (*q*).

(*q*) See s. 10, page 27. For prescribed fee, see first schedule to Patents Rules, page 215.

Application on Communication from Abroad.

27. An application for a patent for an invention communicated from abroad shall be made in the form A1 set forth in the second schedule thereto (*r*). Communication from abroad.

(*r*) See s. 5, and note. For form, see page 221.

Sizes and Methods of Preparing Drawings accompanying Provisional or Complete Specifications.

28. The drawings accompanying provisional or complete specifications shall be made upon half-sheets or sheets of imperial drawing paper, to be within a border line of 19 inches by 12 inches, or 27 inches by 19 inches, with a margin of $\frac{1}{4}$ an inch all round (*s*). Size of drawings.

(*s*) See s. 5, subs. 3 & 4.

29. A copy of the drawings will be required upon *rolled* imperial drawing paper or upon thin Bristol board of the same dimensions as the original drawing or drawings. All the lines must be absolutely black, Indian ink of the best quality to be used, and the same strength or colour of the ink maintained throughout the drawing. Any shading Copies of drawings

must be in lines clearly and distinctly drawn, and as open as is consistent with the required effect. Section lines should not be too closely drawn. No colour must be used for any purpose upon the copy of the drawings. All letters and figures of reference must be bold and distinct. The border line should be one fine line only. The drawings must not be folded, but must be delivered at the Patent Office either in a perfectly flat state, or rolled upon a roller so as to be free from creases or breaks (t).*

* (t) As the drawings accompanying the provisional and complete specification respectively are copied at the patent office for publication by the process of photo-lithography, this rule must be strictly observed, in order that correct copies may be made.

30. Where a complete specification is left at the Patent Office after a provisional specification has been accepted, the complete specification and drawing or drawings accompanying the same, as well as the copy thereof, must be prepared in accordance with rules 10, 28, & 29.

Illustrated Journal (u).

Additional
drawing
to be
furnished.

31. Every applicant for the grant of a patent shall, in addition to the drawings to be furnished with his complete specification, furnish the controller with a drawing illustrative of the feature or features of novelty constituting his invention. Such drawing must be prepared in the manner pre-

scribed for the copy of the original drawing or drawings accompanying the specification, but must not cover a space exceeding 16 square inches. The drawing must be accompanied by a concise explanatory statement on foolscap paper and legibly written or printed.

(u) See s. 40.

Opposition to Grants of Patents.

32. A notice of opposition to the grant of a Notice of opposition. patent shall state the ground or grounds on which the person giving such notice (hereinafter called the opponent) intends to oppose the grant, and shall be signed by him. Such notice shall state his address for service in the United Kingdom (v).

(v) For form of opposition to grant of letters patent, see second schedule, form D, page 224. See s. 11, page 28.

33. On receipt of such notice a copy thereof Copy for applicant. shall be furnished by the comptroller to the applicant.

34. Where the ground or one of the grounds of Particulars of prior patent. opposition is that the invention has been patented in this country on an application of prior date, the title, number, and date of the patent granted in such prior application shall be specified in the notice.

35. Within fourteen days after the expiration of Opponent's evidence. two months from the date of the advertisement of the acceptance of a complete specification, the opponent

shall leave at the Patent Office statutory declarations in support of his opposition, and deliver to the applicant a list thereof.

Applicant's
evidence.

36. Within fourteen days from the delivery of such list the applicant shall leave at the patent office statutory declarations in answer, and deliver to the opponent a list thereof, and within seven days from such delivery the opponent shall leave at the Patent Office his statutory declarations in reply, and deliver to the applicant a list thereof. Such last-mentioned declarations shall be confined to matters strictly in reply.

Evidence in
reply.

Copies of the declarations mentioned in this and the last preceding rule may be obtained either from the Patent Office or from the opposite party.

Closing of
evidence.

37. No further evidence shall be left on either side except by leave of the comptroller upon the written consent of the parties duly notified to him, or by special leave of the comptroller on application made to him for that purpose.

38. Either party making such application shall give notice thereof to the opposite party, who shall be entitled to oppose the application.

Notice of
hearing.

39. On the completion of the evidence the comptroller shall appoint a time for the hearing of the case, and shall give to the parties seven days' notice at the least of such appointment.

40. On the hearing of the case no opposition shall be allowed in respect of any ground not stated in the notice of opposition, and where the ground or one of the grounds is that the invention has been patented in this country on an application of prior date, the opposition shall not be allowed upon such ground unless the title, number, and date of the patent granted on such prior application shall have been duly specified in the notice of opposition.

Disallow-
ance of
opposition
in certain
cases.

41. The decision of the comptroller in the case shall be notified by him to the parties (w).

Decision to
be notified
to parties.

(w) See s. 12.

Certificates of Payment on Renewal.

42. If a patentee intends at the expiration of the fourth or eighth year from the date of his patent to make the prescribed payment for keeping the same in force, he shall, seven days at least before such expiration, give notice to the comptroller of such intention, and shall, before the expiration of such fourth or eighth year, as the case may be, leave at the Patent Office a form of certificate of payment, duly stamped, subject as hereinafter provided, with the prescribed fee of £50 or £100, as the case may be (x).

Payment of
fees of £50
and £100 for
continuance
of patent.

(x) For list of fees, see first schedule, page 215. See s. 24, page 45.

As to
patents
granted
before com-
mencement
of Act.

43. In the case of patents granted before the commencement of the said Act, the above rule shall be read as if the words "seventh year" were therein written instead of the words "eighth year."

Payment of
annual fees
in lieu of
£50 and
£100.

44. If the patentee intends to pay annual fees in lieu of the above-mentioned fees of £50 or £100, he shall, seven days at least before the expiration of the fourth and each succeeding year during the term of the patent, until and inclusive of the 13th year thereof, give notice to the comptroller of such intention, and shall, before the expiration of such respective periods as aforesaid, leave at the Patent Office a form of certificate of payment, duly stamped with the fee prescribed to be paid at such periods respectively.

Certificate
of payment.

45. On due compliance with these rules, and as soon as may be after such respective periods as aforesaid, or any enlargement thereof respectively duly granted, the comptroller shall give to the patentee a certificate that the prescribed payment has been duly made.

Enlargement of Time.

Enlarge-
ment of time
for pay-
ment.

46. An application for an enlargement of the time for making a prescribed payment shall state in detail the circumstances in which the patentee by accident, mistake, or inadvertence has failed to make such payment, and the comptroller may require the patentee to substantiate by such proof

as he may think necessary the allegations contained in the application for enlargement (y).

(y) For form of application for enlargement of time for payment of renewal fee, see form K, second schedule, patents rules, page 232. See s. 17, subs. 2-4, page 35.

47. The time prescribed by these rules for doing ^{In other cases.} any act, or taking any proceeding thereunder, may be enlarged by the comptroller if he think fit, and upon such notice to other parties, and proceedings thereon, and upon such terms, as he may direct.

Amendment of Specification.

48. A request (z) for leave to amend a specification ^{Request for leave to amend.} shall be signed by the applicant or patentee and accompanied by a copy of the original specification and drawings, showing in red ink the proposed amendment, and shall be advertised by publication of the request and the nature of the proposed ^{Advertisement.} amendment in the official journal of the Patent Office, and in such other manner (if any) as the comptroller may in each case direct.

(z) For form of application to amend specification or drawings, see second schedule to Patents Rules, form E, page 225. For provisions in Act as to amendment of specification, see s. 18, page 37.

49. A notice of opposition to the amendment ^{Notice of opposition.} shall state the ground or grounds on which the person giving such notice (hereinafter called the opponent) intends to oppose the amendment, and

shall be signed by him. Such notice shall state his address for service in the United Kingdom (a).

(a) For form of notice of opposition to amendment of specification and drawings, see form G, page 227.

Copy for the applicant. 50. On receipt of such notice a copy thereof shall be furnished by the comptroller to the applicant or patentee, as the case may be (hereinafter called the applicant).

Opponent's evidence. 51. Within fourteen days after the expiration of one month from the first advertisement of the application for leave to amend, the opponent shall leave at the Patent Office statutory declarations in support of his opposition and deliver to the applicant a list thereof.

Further proceedings. 52. Upon such declarations being left, and such list being delivered, the provisions of rules 36-39 shall apply to the case, and the further proceedings therein shall be regulated in accordance with such provisions as if they were here repeated (b).

(b) See rules as to opposition to grants of patents, pp. 197-199.

Decision to be notified to parties. 53. The decision of the comptroller in the case shall be notified by him to the parties.

Requirements thereon. 54. Where leave to amend is given the applicant shall, if the comptroller so require, and within a time to be limited by him, leave at the Patent Office a

new specification and drawings as amended, to be prepared in accordance with rules 10, 28, & 29 (c).

(c) See rule 10, page 189; rules 28 & 29, page 195.

55. Where a request for leave to amend is made by or in pursuance of an order of the Court or a judge, an official or verified copy of the order shall be left with the request at the Patent Office (d). Leave by order of Court.

(d) See s. 19, page 41.

56. Every amendment of a specification shall be forthwith advertised by the comptroller in the official journal of the Patent Office, and in such other manner (if any) as the comptroller may direct. Advertisement of amendment.

Compulsory Licenses (e).

57. A petition to the Board of Trade for an order upon a patentee to grant a license shall show clearly the nature of the petitioner's interest, and the ground or grounds upon which he claims to be entitled to relief, and shall state in detail the circumstances of the case, the terms upon which he asks that an order may be made, and the purport of such order (f). Petition for compulsory grant of licenses.

(e) See s. 22, page 43.

(f) For form of application, see form H, page 228.

To be left
with evi-
dence at
patent
office.

58. The petition and an examined copy thereof shall be left at the Patent Office, accompanied by the affidavits, or statutory declarations, and other documentary evidence (if any) tendered by the petitioner in proof of the alleged default of the patentee.

Directions
as to further
proceedings
unless
petition
refused.

59. Upon perusing the petition and evidence, unless the Board of Trade shall be of opinion that the order should be at once refused, they may require the petitioner to attend before the comptroller, or other person or persons appointed by them, to receive his or their directions as to further proceedings upon the petition.

Procedure.

Petitioner's
evidence.

60. If and when a *prima facie* case for relief has been made out to the satisfaction of the Board of Trade, the petitioner shall upon their requisition, and on or before a day to be named by them, deliver to the patentee copies of the petition and of the affidavits or statutory declarations and other documentary evidence (if any) tendered in support thereof.

Patentee's
evidence.

61. Within fourteen days after the day of such delivery the patentee shall leave at the Patent Office his affidavits or statutory declarations in opposition to the petition, and deliver copies thereof to the petitioner.

Evidence in
reply.

62. The petitioner within fourteen days from such delivery shall leave at the Patent Office his

affidavits, or statutory declarations in reply, and deliver copies thereof to the petitioner (g); such last-mentioned affidavits or declarations shall be confined to matters strictly in reply.

(g) "Petitioner" is a misprint in the rules published by the patent office for "patentee."

63. Subject to any further directions which the Board of Trade may give the parties shall then be heard at such time, before such person or persons, in such manner, and in accordance with such procedure as the Board of Trade may, in the circumstances of the case, direct, but so that full opportunity shall be given to the patentee to show cause against the petition. ^{Further proceedings.}

Register of Patents.

64. Upon the sealing of a patent the comptroller shall cause to be entered in the Register of Patents the name, address, and description of the patentee as the grantee thereof, and the title of the invention (h). ^{Entry of grant.}

(h) See s. 23.

65. Where a person becomes entitled to a patent or to any share or interest therein, by assignment either throughout the United Kingdom and the Isle of Man, or for any place or places therein, or by transmission or other operation of law, a request for the entry of his name in the register as such complete or partial proprietor of the patent, or ^{Request for entry of subsequent proprietorship.}

of such share or interest therein, as the case may be, shall be addressed to the comptroller, and left at the Patent Office (i).

(i) For form of request to enter name upon the register of patents, see form L, page 233. As to assignment for particular places, see s. 36. For effect of registration and non-registration, see s. 87, page 145.

Signature
of request.

66. Such request shall in the case of individuals be made and signed by the person requiring to be registered as proprietor, or by his agent duly authorised to the satisfaction of the comptroller, and in the case of a body corporate by their agent authorised in like manner.

Particulars
to be stated
in request.

67. Every such request shall state the name, address, and description of the person claiming to be entitled to the patent, or to any share or interest therein, as the case may be (hereinafter called the claimant), and the particulars of the assignment, transmission, or other operation of law, by virtue of which he requires to be entered in the register as proprietor, so as to show the manner in which, and the person or persons to whom, the patent, or such share or interest therein as aforesaid, has been assigned or transmitted.

Production
of docu-
ments of
title and
other proof.

68. Every assignment and every other document containing, giving effect to, or being evidence of, the transmission of a patent or affecting the proprietorship thereof as claimed by such request, except such documents as are matters of record,

shall be produced to the comptroller, together with the request above prescribed, and such other proof of title as he may require for his satisfaction.

As to a document which is a matter of record, an official or certified copy thereof shall in like manner be produced to the comptroller.

69. There shall also be left with the request an examined copy of the assignment or other document above required to be produced. Copies for patent office.

As to a document which is a matter of record, an official or certified copy shall be left with the request in lieu of an examined copy.

70. A body corporate may be registered as proprietor by its corporate name. Body corporats.

71. Where an order has been made by Her Majesty in Council for the extension of a patent for a further term or for the grant of a new patent, or where an order has been made by the Court for the revocation of a patent or the rectification of the register under section 90 of the said Act or otherwise affecting the validity or proprietorship of the patent, the person in whose favour such order has been made shall forthwith leave at the Patent Office an office copy of such order. The register shall thereupon be rectified or the purport of such order shall otherwise be duly entered in the register, as the case may be (j). Entry of orders of the Privy Council or of the Court.

(j) For form of application for entry of order of Privy Council in register, see form S, page 239.

Entry of
payment of
fees on issue
of certifi-
cate.

72. Upon the issue of a certificate of payment under rule 45, the comptroller shall cause to be entered in the Register of Patents a record of the amount and date of payment of the fee on such certificate (*k*).

(*k*) See page 200.

Entry of
failure to
pay fees.

73. If a patentee fails to make any prescribed payment within the prescribed time or any enlargement thereof duly granted, such failure shall be duly entered in the register (*l*).

(*l*) See s. 17, page 35.

Entry of
licenses.

74. An examined copy of every license granted under a patent shall be left at the Patent Office by the licensee, with a request that a notification thereof may be entered in the register. The licensee shall cause the accuracy of such copy to be certified as the comptroller may direct, and the original license shall at the same time be produced and left at the Patent Office if required for further verification (*m*).

(*m*) For form of request to enter notification of license in register, see form M, page 234.

Hours of
inspection
of register.

75. The Register of Patents shall be open to the inspection of the public on every weekday between the hours of ten and four, except on the days and at the times following (*n*) :

(*n*) See s. 23, page 44, and s. 88, page 147.

- (a.) Christmas Day, Good Friday, the day observed as Her Majesty's birthday, days observed as days of public fast or thanksgiving, and days observed as holidays at the Bank of England ; or
- (b.) Days which may from time to time be notified by a placard posted in a conspicuous place at the Patent Office ;
- (c.) Times when the register is required for any purpose of official use.

76. Certified copies of any entry in the register, ^{Certified copies of documents.} or certified copies of, or extracts from, patents, specifications, disclaimers, affidavits, statutory declarations, and other public documents in the Patent Office, or of or from registers and other books kept there, may be furnished by the comptroller on payment of the prescribed fee (o).

- (o) See first schedule to Patents Rules, 33-35.

Power to Dispense with Evidence, &c.

77. Where, under these rules, any person is required to do any act or thing, or to sign any document, or to make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the comptroller, or at the Patent Office, and it is shown to the satisfaction of the comptroller that from any reasonable cause such person is unable to do such act or thing, or to sign such

document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the comptroller, with the sanction of the Board of Trade, and upon the production of such other evidence, and subject to such terms as they may think fit, to dispense with any such act or thing, document, declaration, or evidence.

Repeal.

Repeal. 78. All general rules made by the Lord Chancellor, or by any other authority, under the Patent Law Amendment Acts, and in force on the 31st day of December, 1883, shall be and they are hereby repealed as from that date, without prejudice, nevertheless, to any application then pending (*p*).

(*p*) For saving as to existing rules, see s. 115.

Dated the 21st day of December, 1883.

(Signed) J. CHAMBERLAIN,

President of the Board of Trade.

R U L E S

REGULATING THE

PRACTICE AND PROCEDURE ON APPEALS TO THE LAW OFFICERS (a).

(a) For power of law officers to make rules and order costs, see s. 38, page 83.

1. When any person intends to appeal to the law officer from a decision of the comptroller in any case in which such appeal is given by the Act, he shall within fourteen days from the date of the decision appealed against, file in the Patent Office a notice of such his intention (b).

(b) For form of notice to appeal to law officers, see second schedule to Patents Rules, form T, page 240.

2. Such notice shall state the nature of the decision appealed against, and whether the appeal is from the whole, or part only, and if so, what part of such decision.

3. A copy of such notice of intention to appeal shall be sent by the party so intending to appeal to the law officers' clerk at room 549, Royal Courts of Justice, London; and when there has been an opposition before the comptroller, to the opponent or opponents; and when the comptroller has refused

to seal a patent on the ground that a previous application for a patent for the same invention is pending, to the prior applicant.

4. Upon notice of appeal being filed, the comptroller shall forthwith transmit to the law officer's clerk all the papers relating to the matter of the application in respect of which such appeal is made.

5. No appeal shall be entertained of which notice is not given within fourteen days from the date of the decision appealed against, or such further time as the comptroller may allow, except by special leave upon application to the law officer.

6. Seven days' notice, at least, of the time and place appointed for the hearing of any appeal, shall be given by the law officer's clerk, unless special leave be given by the law officer that any shorter notice be given.

7. Such notice shall in all cases be given to the comptroller and the appellant; and, when there has been an opposition before the comptroller, to the opponent or opponents; and, when the comptroller has refused to seal a patent on the ground that an application for a patent for the same invention is pending, to the prior applicant.

8. The evidence used on appeal to the law officer shall be the same as that used at the hearing before the comptroller; and no further evidence shall be given, save as to matters which have

occurred or come to the knowledge of either party, after the date of the decision appealed against, except with the leave of the law officer upon application for that purpose (c).

(c) For evidence used on hearing before comptroller, see opposition to grant of letters patent, rules 35-37, inclusive ; amendment of specification, rules 51 & 52.

9. The law officer shall, at the request of either party, order the attendance at the hearing on appeal, for the purpose of being cross-examined, of any person, who has made a declaration, in the matter to which the appeal relates, unless in the opinion of the law officer there is good ground for not making such order.

10. Any person requiring the attendance of a witness for cross-examination shall tender to the witness whose attendance is required a reasonable sum for conduct money.

11. Where the law officer orders that costs shall be paid by any party to another, he may fix the amount of such costs, and if he shall not think fit to fix the amount thereof, he shall direct by whom and in what manner the amount of such costs shall be ascertained (d).

12. If any costs so ordered to be paid be not paid within fourteen days after the amount thereof has been so fixed or ascertained, or such shorter period as shall be directed by the law officer, the

party to whom such costs are to be paid may apply to the law officer for an order for payment under the provisions of section 38 of the Act (d).

(d) See s. 38, page 83.

13. All documentary evidence required, or allowed by the law officer to be filed, shall be subject to the same regulations, in all respects, as apply to the procedure before the comptroller, and shall be filed in the Patent Office, unless the law officer shall order to the contrary.

14. Any notice or other document required to be given to the law officer's clerk, under these rules, may be sent by a prepaid letter through the post.

HENRY JAMES, A.G.

FARRER HERSCHELL, S.G.

SCHEDULES TO PATENTS RULES.

FIRST SCHEDULE.

LIST OF FEES PAYABLE ON AND IN CONNEXION WITH LETTERS PATENT.

Up to Sealing.

	£	s.	d.	£	s.	d.
1. On application for provisional protection	1	0	0			
2. On filing complete specification	3	0	0			
				4	0	0
or,						
3. On filing complete specification with first application	4	0	0			
4. On appeal from comptroller to law officer. By appellant	3	0	0			
5. On notice of opposition to grant of patent. By opponent	0	10	0			
6. On hearing by comptroller. By applicant and by opponent respectively	1	0	0			
7. On application to amend specification : Up to sealing. By applicant	1	10	0			
8. After sealing. By patentee	3	0	0			
9. On notice of opposition to amendment. By opponent	0	10	0			

10. On hearing by comptroller. By applicant and £ s. d.
by opponent respectively 1 0 0
11. On application to amend specification during
action or proceeding. By patentee 3 0 0

12. On application to the Board of Trade for a com-
pulsory license. By person applying 5 0 0
13. On opposition to grant of compulsory license.
By patentee 5 0 0
14. On certificate of renewal :
Before end of 4 years from date of patent . 50 0 0
15. Before end of 7 years, or in the case of patents
granted under the "Patents, Designs, and
Trade Marks Act, 1883," before the end
of 8 years from date of patent 100 0 0
or in lieu of the fees of £50 and £100, the fol-
lowing annual fees :

					£	s.	d.
16.	Before expiration of 4th year from date of patent				10	0	0
17.	"	"	5th	"	"	10	0 0
18.	"	"	6th	"	"	10	0 0
19.	"	"	7th	"	"	10	0 0
20.	"	"	8th	"	"	15	0 0
21.	"	"	9th	"	"	15	0 0
22.	"	"	10th	"	"	20	0 0
23.	"	"	11th	"	"	20	0 0
24.	"	"	12th	"	"	20	0 0
25.	"	"	13th	"	"	20	0 0

On enlargement of time for payment of renewal
fees :—

26. Not exceeding 1 month 3 0 0
27. " 2 months 7 0 0
28. " 3 months 10 0 0
29. For every entry of an assignment, transmission,
agreement, license or extension of patent . . 0 10 0
30. For duplicate of letters patent each 2 0 0

31. On notice to comptroller of intended exhibition of a patent under section 39	£ s. d.
32. Search or inspection fee each	0 10 0
33. For office copies. every 100 words	0 1 0
(but never less than one shilling)	0 0 4
34. „ of drawings, cost according to agreement.	
35. For certifying office copies, MSS. or printed, each	0 1 0
36. On request to comptroller to correct a clerical error	0 5 0
37. For certificate of comptroller under section 96	0 5 0
38. For altering address in register	0 5 0

(Signed) J. CHAMBERLAIN,
President of the Board of Trade.

21st December, 1883.

Approved :

(Signed) CHARLES C. COTES,
HERBERT J. GLADSTONE,
Lords Commissioners of
Her Majesty's Treasury.

4th December, 1883.

THE SECOND SCHEDULE.

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PATENTS FORMS.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

PATENT.

FORM A.

Application for Patent.

(a)

(a) Here insert name, full address, and calling of applicant or applicants.

, do solemnly

and sincerely declare that in possession of an invention
for (b)

(b) Here insert title of invention.

that the true and first inventor thereof; and that
the same is not in use by any other person or persons to the
best of knowledge and belief; and humbly pray that
a patent may be granted

for the said invention.

And make the above solemn declaration conscientiously

believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

(c) Signature of applicant or applicants.

(c)

(d) If declared by more than one applicant and at different times or places, insert after "Declared" the words "by the above-named,"

Declared at (d)

in the

this

day of

18 .

Before me,

(e)

(e) Signature and title of the person for whom the declaration is made.

[Declared at (d)

in the

this

day of

18 .

Before me,

(e)

(f) If not required as in note (d), strike out part within brackets.

(f)]

NOTE.—Where the above declaration is made out of the United Kingdom, the words "and by virtue of the Statutory Declarations Act, 1835," must be omitted, and the declaration must be made before a British Consular Officer, or, where it is not reasonably practicable to make it before such officer, then before a public officer duly authorised in that behalf.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM A1.

*Application for Patent for Inventions Communicated from
Abroad.*

PATENT.

I (a)
of
county of do solemnly and
sincerely declare that I am in possession of an invention for (b)

(a) Here insert name,
full address,
and calling
of appli-
cant.

(b) Here insert
title of
invention.

which invention has been communicated to me from abroad
by (c)

(c) Here insert name,
address,
and calling
of commu-
nicant.

that I claim to be the true and first inventor thereof ; and that
the same is not in use within this realm by any other person
or persons to the best of my knowledge and belief ; and I
humbly pray that a patent may be granted to me for the said
invention.

And I make the above solemn declaration conscientiously
believing the same to be true, and by virtue of the provisions
of the Statutory Declarations Act, 1835.

Declared at (d) in the county of (d) Signa-
this day of ture of
18 . applicant.

Before me
(e)

(e) Signa-
ture and
title of the
officer be-
fore whom
the declara-
tion is
made.

NOTE.—Where the above declaration is made out of the
United Kingdom the words, “and by virtue of the Statutory
Declarations Act, 1835,” must be omitted, and the declaration
must be made before a British Consular officer, or, where it is
not reasonably practicable to make it before such officer, then
before a public officer duly authorised in that behalf.

To be issued with FORM A or A1.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM B.

Provisional Specification.

(To be furnished in Duplicate.)

a) Here insert title, as (a)
in declaration.

(b) Here insert name, (b)
full address,
and calling
of applicant
or applicants, as in
declaration.

do hereby declare the nature of said invention for

(c) Here insert short description of invention. to be as follows (c) :

NOTE.—No stamp is required on this document, which must form the commencement of the provisional specification ; the continuation to be upon wide-ruled foolscap paper (but on one side only) with a margin of two inches on left hand of paper. The provisional specification and the “duplicate” thereof must be signed by the applicant or his agent on the last sheet, the date being first inserted as follows :

“Dated this day of 18 .”

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM C.

PATENT.

*Complete Specification.**(To be furnished in Duplicate—one unstamped.)*

(n) Here insert title, as in declaration.

(a)

(b) Here insert name, full address, and calling of applicant or applicants, as in declaration.

(b)

do hereby declare

the nature of invention for

and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement (c) :

(c) Here insert full description of invention, which must end with a distinct statement of claim or claims, in the following form :
 "Having now particularly described and ascertained the nature of my said invention, and in what manner the same is to be performed, I declare that what I claim is,
 (1.)
 (2.)
 (3.)
 Here state distinctly the features of novelty claimed."

NOTE.—This document must form the commencement of the complete specification ; the continuation to be upon wide-ruled foolscap paper (but on one side only) with a margin of two inches on left hand of paper. The complete specification and the "duplicate" thereof must be signed by the applicant or his agent on the last sheet, the date being first inserted as follows :

"Dated this day of 18 ."



PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM D.

Form of Opposition to Grant of Patent.

(To be accompanied by an unstamped copy.)

* Here state
name and
full address.

*I

hereby give notice of my intention to oppose the grant of
letters patent upon application No. of
applied for by

† Here state upon the ground †
upon which
of the
grounds of
opposition
permitted
by s. 11 of
the Act the
grant is
opposed.

‡ Here in-
sert signa-
ture of op-
ponent or
agent.

(Signed) ‡

*To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.*

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

PATENT.

FORM E.

Form of Application for Hearing by the Comptroller.

IN CASES OF REFUSAL TO ACCEPT, OPPOSITION, OR APPLICATIONS FOR
AMENDMENTS, ETC.

SIR,

of (a)

(a) Here in-
sert full
address.

hereby apply to be heard in reference to

and request that I may receive due notice of the day fixed for
the hearing.

Sir,

Your obedient Servant,

To the Comptroller,

*Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.*



PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM F.

Form of Application for Amendment of Specification or Drawings.

* Here state
name and
full address
of applicant
or patentee.

*

seek leave to amend the specification of Letters Patent No.
of 188 , as shown in red ink in the copy of the original
specification hereunto annexed

† Here state
reasons for
seeking
amend-
ment; and
where the
applicant is
not the pa-
tente, state
what in-
terest he
possesses in
the letters
patent.

My reasons for making this amendment are as follows†

(Signed)

To the Comptroller,

*Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.*

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

PATENT.

FORM G.

*Form of Opposition to Amendment of Specification or
Drawings.**[To be accompanied by an unstamped copy.]*

* Here state
name and
full address
of opponent.

hereby give notice of objection to the proposed amendment of
the specification or drawings of Letters Patent No.
of 188 for the following reason : †

† Here state
reason of
opposition.

(Signed)

*To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.*



PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM H.

Form of Application for Compulsory Grant of License.

[To be accompanied by an unstamped copy.]

* Here state
name and
full address
of appli-
cant.

hereby request you to bring to the notice of the Board of Trade
the accompanying petition for the grant of a license to me by †
Here state
name and
address of
patentee,
and number
and date of
his patent.

(Signed)

NOTE.—The petition must clearly set forth the facts of the case and be accompanied by an examined copy thereof. See form next page.

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM H1.

Form of Petition for Compulsory Grant of Licenses.

To the Lords of the Committee of Privy Council for Trade.

The PETITION of (a) _____ of _____
in the county of _____, being a
person interested in the matter of this petition as hereinafter
described :

SHewETH as follows :

1. A patent dated _____ No. _____
was duly granted to _____
for an invention of (b) _____

2. The nature of my interest in the matter of this petition
is as follows : (c) _____

3. (d) _____

Having regard to the circumstances above stated, the

(a) Here insert name, full address, and description.

(b) Here insert title of invention.

(c) Here state fully the nature of petitioner's interest.

(d) Here state in detail the circumstances of the case under s. 22 of the said Act, and show that it arises by reason of the default of the patentee to grant licenses on reasonable terms. The statement of the case should also show as far as possible that the terms of the proposed order are just and reasonable. The paragraphs should be numbered consecutively.

(e) Here state the ground or grounds on which relief is claimed in the language of s. 23, sub. (a), (b), or (c), as the case may be.
 (f) Here state the purport and effect of the proposed order and the terms as to the amount of royalties, security for payment, or otherwise, upon which the petitioner claims to be entitled to the relief in question.

petitioner alleges that by reason of the aforesaid default of the patentee to grant licenses on reasonable terms (e)

Your petitioner therefore prays that an order may be made by the Board of Trade (f)

or that the petitioner may have such other relief in the premises as the Board of Trade may deem just.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM I.

PATENT.

Form of Opposition to Compulsory Grant of License.

* Here state *
name and
full address.

hereby give notice of objection to the application of

for the compulsory grant of a License under Patent No.
of 188 .

(Signed)

*To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.*

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM J.

Application for Certificate of Payment or Renewal.

hereby transmit the fee prescribed for the continuation in force of Patent No. , of 18 ,
for a further period of .

Name*

Address

* Here insert name and full address of patentee or his agent.

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.O.

Certificate of Payment or Renewal.

Letters Patent No. of 188 ,
18 .

PATENT.

This is to certify that did this
day of 18 , make the prescribed payment
of £ in respect of a period of from
and that by virtue of such payment the rights of
remain in force.*

* See s. 17
of the
Patents,
Designs,
and Trade
Marks Act,
1883.

SEAL.

Patent Office, London.

PATENT.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM K.

*Form of Application for Enlargement of Time for Payment
of Renewal Fee.*

SIR,

I hereby apply for an enlargement of time for
month in which to make the payment of
£ upon my Patent, No.
of 188 .

I am,

Sir,

Your obedient servant,

(a) Here in- (a)
sert full
address to
which re-
ceipt is to
be sent.

*To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.*

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM L.

PATENT.

*Form of Request to enter Name upon the Register of Patents,
and of Declarations in support thereof.*

I (a)

hereby request that you will enter (b) name (c) in
the Register of Patents :

(d) claim to be entitled (e)

of the Patent No. of 188 , granted to (f)

for (g)

by virtue of (h)

And in proof whereof I transmit the accompanying (i)

with an examined copy
thereof (j).

I am, Sir,

Your obedient Servant,

To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.

(a) Or We.
Here insert
name, full
address,
and descrip-
tion.
(b) My or
our.
(c) Or
names.
(d) I or We.
(e) Here in-
sert the
nature of
the claim.
(f) Here give
name and
address, etc.
of patentee
or
patentees.
(g) Here in-
sert title of
the inven-
tion.
(h) Here
specify the
particulars
of such
document,
giving its
date, and
the parties
to the same,
and show-
ing how the
claim here
made is sub-
stantiated.
(i) Here in-
sert the
nature of
the docu-
ment.
(j) Where
any docu-
ment which
is a matter
of record is
required to
be left, a
certified or
official copy
in lieu of an
examined
copy must
be left.

PATENT.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM M.

*Form of Request to enter Notification of License in the
Register of Patents.*

SIR,

I HEREBY transmit an examined copy of a license
granted to me by

under Patent No. of 188 , as well as the original
license for verification, and I have to request that a notification
thereof may be entered in the Register.

I am, Sir,

Your obedient Servant,

(a) Here in-
sert full
address.

(a)

*To the Comptroller,
Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.*

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

PATENT.

FORM N.

Application for Duplicate of Patent.

Date

SIR,

I REGRET to have to inform you that the Letters Patent,

dated *

No.

* Here insert date, No., name, and full address of patentee.

granted to

for an invention of †

† Here insert title of invention.

have been ‡

‡ Here insert the word "destroyed" or "lost," as the case may be.

I beg therefore to apply for the issue of a duplicate of such Letters Patent. §

§ Here state interest possessed by applicant in the letters patent.

[Signature of Applicant.]

*To the Comptroller,**Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.*

PATENT.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM O.

Notice of Intended Exhibition of an Unpatented Invention.

* Here state
name and
full address
of appli-
cant.

*

hereby give notice of my intention to exhibit a
of at the

† State
"opened"
or "is to
open."

Exhibition, which † of 18 ,
under the provisions of the Patents, Designs, and Trade Marks
Acts of 1883.

‡ Insert
brief des-
cription of
invention,
with draw-
ings if
necessary.

‡

herewith enclos

(Signed)

To the Comptroller,

*Patent Office, 25, Southampton Buildings,
Chancery Lane, London, W.C.*

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

PATENT.

FORM P.

Form of Request for Correction of Clerical Error.

SIR,

I HEREBY request that the following clerical error (a) ^{(a) Or errors.}
may be corrected in (b)

(b) Here
state
whether in
application,
specifica-
tion, or
register.

Signature

Full Address

To the Comptroller,

Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

PATENT.

FORM Q.

Certificate of Comptroller-General.

Patent Office,

London,

188 .

I, _____, Comptroller-General of Patents,
Designs, and Trade Marks, hereby certify

PATENT.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM R.

Form of Notice for Alteration of an Address in Register.

SIR,

(a) Here
state names
or names
and full ad-
dress of ap-
plicant or
applicants.

(a)

hereby request that
be altered as follows :

address now upon the Register may

(b) Here in- (b)
sert full
address.

Sir,

Your obedient Servant,

To the Comptroller,

Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

PATENT.

FORM S.

*Form of Application for Entry of Order of Privy Council in
Register. **

(a)

(a) Here
state name
and full
address of
applicant.

hereby transmit an office copy of an Order in Council with
reference to (b)

(b) Here
state the
purport of
the order.

Sir,

Your obedient Servant,

To the Comptroller,

Patent Office, 25, Southampton Buildings,

Chancery Lane, London, W.C.

* A similar form may also be used for application for entry of order of the Court for the revocation of a patent, as provided by s. 90. See rule 71.

PATENT.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM T.

Form of Appeal to Law Officer.

(a) Here insert name and full address of appellant. I, (a) of (a) hereby give notice of my intention to appeal to the Law Officer from (b)

(b) Here insert "the decision" or "that part of the decision," as the case may be. of the Comptroller of the day of

(c) Here insert "refused [or allowed] application for patent," or "refused [or allowed] application for leave to amend patent," or otherwise, as the case may be. 188 , whereby he (c)

(d) Insert number and year. No. (d) of the year 188 (d).

Signature

Date

N.B.—This notice has to be sent to the Comptroller-General at the Patent Office, London, W.C., and a copy of same to the Law Officers' Clerk at Room 549, Royal Courts of Justice, London.

21st December, 1883.

(Signed) J. CHAMBERLAIN,
President of the Board of Trade.

DESIGNS RULES.

By virtue of the provisions of the Patents, Designs, and Trade Marks Act, 1883, the Board of Trade do hereby make the following rules :—(a)

(a) See s. 101.

Commencement.

1. These rules may be cited as the Designs Rules, 1883, and shall come into operation from and immediately after the 31st day of December, 1883 (b).

(b) See s. 101, subs. 4 and 5. "Rules for the Registration of Designs, with Classification of Goods and Table of Fees," is the full title of these rules.

Interpretation.

2. In the construction of these rules any words herein used defined by the said Act shall have the meanings thereby assigned to them respectively (c). Interpre-
tation.

(c) See s. 117 for definition of "person," "court," "law officers," "the Treasury," "comptroller," "prescribed," &c. See s. 60 for definition of "design," "copyright," and s. 61 for "proprietor of design."

Fees.

Fees. 3. The fees to be paid under the said Act, so far as it relates to applications for and registration of designs, shall be the fees specified in the first schedule hereto (d).

(d) See page 253.

Forms.

Forms. 4. An application for the registration of a design shall be made in the form E, in the second schedule hereto. The remaining forms in such schedule may be used in all cases to which they are applicable (e).

(e) See page 256. This form supersedes that (form E) given in the first schedule to the Act. See page 175. See s. 47, sub. 2.

Classification of Goods.

**Classifica-
tion of
goods.**

5. For the purpose of the registration of designs and of these rules, goods are classified in the manner appearing in the third schedule hereto (f).

(f) See s. 101. For classification, see page 255.

Application for Registration.

Agents. 6. All communications between an applicant for registration of a design and the Comptroller or the Board of Trade, as the case may be, may be made by or through an agent duly authorised to the satisfaction of the comptroller.

**Address of
comp-
troller.**

7. An application for the registration of a design shall, with the prescribed fee, be left at the Patent

Office, Designs Branch, or be sent prepaid by post (g), addressed to the Comptroller at the Patent Office, Designs Branch, 25, Southampton Buildings, Chancery Lane, London.

(g) See s. 97.

8. An application for the registration of a design, ^{Size of papers.} and all drawings, sketches, photographs, or tracings of a design, and all other documents sent to or left at the Patent Office, Designs Branch, or otherwise furnished to the Comptroller or to the Board of Trade, shall be written, printed, copied, or drawn upon strong wide-ruled foolscap paper (on one side only), of the size of 13 inches by 8 inches, leaving a margin of not less than one inch and a half on the left-hand part thereof, and the signature of the applicants or agents thereto must be written in a large and legible hand (h).

The Comptroller may in any particular case vary the requirements of this rule as he may think fit.

(h) See s. 48.

9. An application for the registration of a design ^{Sketches and drawings.} shall be accompanied by a sketch or drawing, or by ^{Nature of design.} three exactly similar drawings, photographs, or tracings of the design, or by three specimens of the design, and shall, in describing the nature of the design, state whether it is applicable for the pattern or for the shape or configuration of the design, and the means by which it is applicable (i).

(i) See s. 47, sub. 3.

When sketches, drawings, or tracings are furnished they must be fixed.

When the articles to which designs are applied are not of a kind which can be pasted into books, drawings, photographs, or tracings of such designs shall be furnished.

Acknowledgment to applicant.

10. On receipt of an application for registration the Comptroller shall send to the applicant an acknowledgment thereof.

Notice of registration.

11. If the Comptroller determines to register a design, he shall as soon as may be send to the applicant a certificate of such registration in the prescribed form, sealed with the seal of the Patent Office (*j*).

(*j*) See s. 49.

Applications may be sent by post.

12. Any application, notice, or other document authorised or required to be left, made, or given at the Patent Office, or to the Comptroller, or to any other person under these rules, may be sent by a prepaid letter through the post, and if so sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post (*k*).

In proving such service or sending it shall be sufficient to prove that the letter was properly addressed and put into the post.

(*k*) See s. 97.

13. Before exercising any discretionary power given to the Comptroller by the said Act adversely to an applicant for registration of a design, the Comptroller shall give him ten days' notice of the time when he may be heard personally or by his agent before the Comptroller (l). Hearing by comp-troller.

(l) See s. 47, sub. 6 ; s. 48, sub. 2.

14. Within five days from the date when such notice would be delivered in the ordinary course of post, the applicant shall notify to the Comptroller whether or not he intends to be heard upon the matter. Hearing by comp-troller.

15. The decision or determination of the Comptroller in the exercise of any such discretionary power as aforesaid shall be notified to the applicant. Notification of comp-troller's decision.

Appeal to the Board of Trade.

16. When the Comptroller refuses to register a design, and the applicant intends to appeal to the Board of Trade from such refusal, he shall, within one month from the date of the decision appealed against, leave at the Patent Office, Designs Branch, a notice of such his intention (m). Notice of appeal to Board of Trade.

(m) See second schedule to Designs Rules, form F, page 290.

17. Such notice shall be accompanied by a statement of the grounds of appeal, and of the applicant's case in support thereof. Statement on appeal.

Notice to
Secretary of
Board of
Trade.

18. The applicant shall forthwith on leaving such notice send a copy thereof to the Secretary of the Board of Trade, No. 7, Whitehall Gardens, London.

Directions
by Board
of Trade.

19. The Board of Trade may thereupon give such directions (if any) as they may think fit for the purpose of the hearing of the appeal for the Board of Trade.

Notice of
time of
hearing.

20. Seven days' notice, or such shorter notice as the Board of Trade may in any particular case direct, of the time and place appointed for the hearing of the appeal shall be given to the Comptroller and the applicant.

Register of Designs.

Registering
design.

21. Upon the sealing of a certificate of registration (n) the Comptroller shall cause to be entered in the register of designs the name, address, and description of the registered proprietor, and the date upon which the application for registration was received by the Comptroller, which day shall be deemed to be the date of the registration.

(n) See s. 49.

Subsequent
proprietors.

22. Where a person becomes entitled to the copyright in a registered design, or to any share or interest therein, by assignment, transmission, or other operation of law, or where a person acquires any right to apply the design either exclusively or otherwise, a request for the entry of his name in

the register as such proprietor of the design, or as having acquired such right, as the case may be, (hereinafter called the claimant,) shall be addressed to the Comptroller, and left at the Patent Office, Designs Branch (o).

(o) For form of request to enter name of subsequent proprietor, see Designs Rules, second schedule, form K, page 261. See s. 87, page 145, for appeal of entry of assignments in register.

23. Every such request shall, in the case of an individual, be made and signed by the person requiring to be registered as proprietor; and in the case of a firm or partnership, by some one or more members of such firm or partnership, or, in either case, by his or their agent respectively duly authorised to the satisfaction of the Comptroller; and in the case of a body corporate, by their agent authorised in like manner (p). Signature
to request.

(p) See page 261.

24. Every such request shall state the name, address, and description of the claimant, and the particulars of the assignment, transmission, or other operation of law by virtue of which the request is made, so as to show the manner in which and the person or persons to whom the design has been assigned or transmitted, or the person or persons who has or have acquired such right as aforesaid, as the case may be (p). Particulars
in request.

(p) See page 261.

Statutory
declaration
with
request.

25. Every such request shall be accompanied by a statutory declaration to be thereunder written verifying the several statements therein, and declaring that the particulars above described comprise every material fact and document affecting the proprietorship of the design or the right to apply the same, as the case may be, as claimed by such request (*q*).

(*q*) See form K, second schedule, Designs Rules, page 261. For manner in which, and persons before whom, statutory declarations are to be taken, see Trade Marks Rules, No. 58, page 285.

Proof of
title if re-
quired.

26. The claimant shall furnish to the Comptroller such other proof of title as he may require for his satisfaction.

Corporate
name.

27. A body corporate may be registered as proprietor by its corporate name.

Notice of
order of
Court.

28. Where an order has been made by the Court, under section 90 of the said Act, the person in whose favour such order has been made shall forthwith leave at the Patent Office an office copy of such order. The register shall thereupon be rectified, or the purport of such order shall otherwise be duly entered in the register, as the case may be (*r*).

(*r*) See s. 90, page 148.

Power to dispense with Evidence.

Comp-
troller's dis-
cretion as to
evidence.

29. Where under these rules any person is required to do any act or thing, or to sign any

document, or make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the Comptroller or at the Patent Office, and it is shown to the satisfaction of the Comptroller that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Comptroller, with the sanction of the Board of Trade, and upon the production of such other evidence and subject to such terms as they may think fit, to dispense with any such act or thing, document, declaration, or evidence.

Amendments.

30. Any document, drawings, sketches, or tracings for the amending of which no special provision is made by the said Act may be amended, and any irregularity in procedure which, in the opinion of the Comptroller, may be obviated without detriment to the interests of any person, may be corrected, if the Comptroller think fit, and upon such terms as he may direct (*s*). ^{Amendments.}

(*s*) For power of comptroller to correct clerical errors, see s. 91, page 149. For rectification of registers by the court, see s. 90.

Enlargement of Time.

31. The time prescribed by these rules for doing any act or taking any proceeding thereunder may ^{Enlargement of time.}

be enlarged by the Comptroller, if he think fit, and upon such terms as he may direct.

Marking Goods.

Registration mark.

32. Before the delivery on sale of any article to which a registered design has been applied, the proprietor of such design shall, if such article is included in any of the classes one to twelve in the third schedule hereto, cause each such article to be marked with the abbreviation "R" and the number appearing on the certificate of registration, and shall, if such article is included in the classes thirteen or fourteen in the third schedule hereto, cause each such article to be marked with the abbreviation "REGD" (t).

(t) See s. 51, page 103.

Inspection.

Office hours.

33. On such days and during such hours as the Comptroller shall from time to time determine and notify by a placard posted at the Patent Office, any person paying the prescribed fee may, on production of the number of any design of which the copyright has ceased, inspect such design, and any person paying the prescribed fee may take a copy or copies of such design (u).

(u) For information as to existence of copyright, see s. 52, page 104, and s. 53, page 105. For prescribed fee, see Designs Rules, first schedule, page 253.

Certificate by Comptroller.

34. Where a certificate is required for the purpose of any legal proceeding or other special purpose as to any entry, matter, or thing which the Comptroller is authorised by the said Act or these rules to make or do, the Comptroller may, on a request in writing and on payment of the prescribed fee, give such certificate, which shall also specify on the face of it the purpose for which it has been requested as aforesaid (v). Certificate in legal proceeding.

(v) For form of request of certificate for use in legal proceedings, see Designs Rules, second schedule, form I, page 259. For form of certificate for use in legal proceedings, see form J, page 260. For prescribed fees, see Designs Rules, first schedule, page 253.

Searches on Production of Sketch of Design.

35. The Comptroller may, on receipt of the prescribed fee, make searches among the designs registered at the Patent Office after the commencement of the Act, and inform any person requesting him so to do whether a particular design produced by such person, and to be applied to goods in any particular class, is or is not identical with or an obvious imitation of any design applied to such goods and registered since the commencement of the Act (w). Search.

(w) See s. 53.

Industrial and International Exhibitions.

36. Any person desirous of exhibiting a design, or any article to which a design has been applied, Notice of exhibition.

at an industrial or international exhibition, or of publishing a description of a design during the period of the holding of the exhibition, shall, after having obtained from the Board of Trade a certificate that the exhibition is an industrial or international one, give to the Comptroller seven days' notice in writing of his intention to exhibit the design or article, or to publish a description of the design, as the case may be.

For the purpose of identifying the design in the event of an application to register the same being subsequently made, the applicant shall furnish to the Comptroller a brief description of the nature of the design, accompanied by a sketch or drawing thereof, and such other information as the Comptroller may in each case require (x).

(x) See s. 57, page 108.

Repeal.

Repeal of
previous
rules.

37. All general rules and regulations made by any authority under the Acts relating to the Copy-right of Designs, and in force on the 31st December, 1883, shall be, and they are hereby repealed as from that date without prejudice nevertheless to any application then pending (y).

(y) For saving as to existing rules, see s. 115, page 167.

J. CHAMBERLAIN,

President of the Board of Trade.

21st December, 1883.

SCHEDULES.

FIRST SCHEDULE.

FEES.

	<i>£ s. d.</i>
1. On application to register one design to be applied to single articles in each class except classes 13 and 14	0 10 0
2. On application to register one design to be applied to single articles in classes 13 and 14	0 1 0
3. On application to register one design to be applied to a set of articles for each class of registration	1 0 0
4. On notice of appeal to Board of Trade against refusal of comptroller to register	1 0 0
5. Copy of certificate of registration, each copy	0 1 0
6. On request for certificate of comptroller for legal proceedings or other special purpose	0 5 0
7. On request to enter name of subsequent proprietor	<div style="display: inline-block; vertical-align: middle;"> <div style="font-size: 3em; vertical-align: middle;">}</div> <div style="display: inline-block; vertical-align: middle;"> same as registra- tion fee. </div> </div>
8. On notice to comptroller of intended exhibition of an unregistered design	0 5 0
9. Inspection of design of which the copyright has expired, for each quarter of an hour	0 1 0
10. Copy of one such design	<div style="display: inline-block; vertical-align: middle;"> <div style="font-size: 3em; vertical-align: middle;">}</div> <div style="display: inline-block; vertical-align: middle;"> cost accord- ing to agree- ment. </div> </div>
11. On request to correct clerical error	0 5 0
12. On request for search under section 53	0 5 0

	£	s.	d.
13. On request to enter new address	0	5	0
14. For office copy, every 100 words	0	0	4
	(but never less than 1s.)		
15. For certifying office copies, MSS. or printed	0	1	0

NOTE.—The term “set” to include any number of articles ordinarily on sale together irrespective of the varieties of size and arrangement in which the particular design may be shown on each separate article.

J. CHAMBERLAIN,
President of the Board of Trade.

Approved,

CHARLES C. COTES,

HERBERT J. GLADSTONE,

Lords Commissioners of Her Majesty's Treasury.

4th December, 1883.

SECOND SCHEDULE.

FORMS.

		PAGE
Form E.	Form of Application to Register	256
„ F.	„ Appeal to Board of Trade	257
„ G.	„ Certificate of Registration	258
„ H.	„ Application for Copy of Certificate of Registration	258
„ I.	„ Request for Certificate for use in Legal Proceedings	259
„ J.	„ Certificate for use in Legal Proceedings	260
„ K.	„ Request to enter Name of Subsequent Proprietor	261
„ L.	„ Notice of intending Exhibition of Unregistered Design	262
„ M.	„ Request for Correction of Clerical Error or for Entry of New Address	263

THIRD SCHEDULE.

Classification of Articles of Manufacture and Substances.

Classes.

1. Articles composed wholly or partly of metal, not included in Class 2.
2. Jewellery.
3. Articles composed wholly or partly of wood, bone, ivory, papier maché, or other solid substances not included in other classes.
4. Articles composed wholly or partly of glass, earthenware, or porcelain, bricks, tiles, or cement.
5. Articles composed wholly or partly of paper (except hangings).
6. Articles composed wholly or partly of leather, including bookbinding, of all materials.
7. Paper hangings.
8. Carpets and rugs in all materials, floorcloths, and oilcloths.
9. Lace, hosiery.
10. Millinery and wearing apparel, including boots and shoes.
11. Ornamental needlework on muslin or other textile fabrics.
12. Goods not included in other classes.
13. Printed or woven designs on textile piece goods.
14. Printed or woven designs on handkerchiefs and shawls.

21st December, 1883.

J. CHAMBERLAIN,

President of the Board of Trade.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM E.

DESIGNS.

Application for Registration of Design in Classes

You are hereby requested to register the accompanying
design in Class , in the name of (a)

(a) Here insert legibly the name, address, and description of the individual or firm.

of

who claims to be the proprietor thereof, and to return the same
to

Statement of nature of design (b)

(b) Such as whether it is applicable for the pattern or for the shape.

(Signed) (c)

(c) To be signed by the applicant.

Dated the day of 188 .

*To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.*

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

DESIGNS.

FORM F.

*Appeal to Board of Trade on Refusal of Comptroller to
Register a Design.*

[TO BE ACCOMPANIED BY AN UNSTAMPED COPY.]

SIR,

I hereby appeal against your decision upon my applica-
tion to register

and beg to submit my case (a) for the decision of the Board of
Trade.

I am, Sir,

Your obedient Servant,

(a) The statement of the case to be written upon foolscap paper (on one side only), with a margin of two inches on the left-hand side thereof.

*The Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.*

SEAL OF
PATENT
OFFICE.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM G.

Certificate of Registration of Design.

(Rd. No. .)

Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.

This is to certify that the Design of which this is a copy was registered this day of 188 , in pursuance of the Patents, Designs, and Trade Marks Act, 1883, in respect of the application of such Design to articles in Class , for which a copyright of five years is granted.

DESIGNS.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM H.

Application for Copy of Certificate of Registration of Design.

SIR,

I hereby request you to furnish me with a Copy Certificate of Registration of Design No. in Class .

(Signed)

Dated the day of 188 .

*To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.*

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

DESIGNS.

FORM I.

Request for Certificate for Use in Legal Proceedings.

SIR,

I hereby request you to send me for the purposes of use
in the suit of (a)

(a) Here
state the
title of the
legal pro-
ceeding or
the other
purpose for
which the
certificate is
required.

a certificate that the design of which a copy is herein enclosed
was (b)

(b) Here
state the
entry,
matter, or
thing which
the writer
wishes
certified.

(Signed)

day of

188 .

*To the Comptroller,**Patent Office, Designs Branch,**25, Southampton Buildings,**Chancery Lane, London, W.C.*

SEAL.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM J.

Certificate for Use in Legal Proceedings.

In the matter of

No.

I, Comptroller-General of Patents,
Designs, and Trade Marks, hereby certify thatWitness my hand and seal this day of
188 .

Comptroller.

*Patent Office, Designs Branch,
25, Southampton Buildings,
London.*

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM K.

*Request to enter Name of Subsequent Proprietor of Design,
with Declaration in support thereof.*

I (a),

hereby request that you will enter (b)
in the Register of Designs as proprietor
No. in Class .

(d) entitled as to the said Design

(e)

name (c)
of the Design

(f) And I do solemnly and sincerely declare that the
above several statements are true, and the particulars above
set out comprise every material fact and document affecting
the proprietorship of the said Design as above claimed.

And I make this solemn declaration conscientiously believ-
ing the same to be true, and by virtue of the provisions of the
Statutory Declarations Act, 1835.

(g)

Declared at
this day of 188 .

Before me,

(h)

*To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.*

DESIGNS.

(a) Or We.
Here insert
name, full
address, and
description.
(b) My or
our.
(c) Or
Names.
(d) I am, or
We are.
(e) Here
state
whether de-
sign trans-
mitted by
death, mar-
riage, bank-
ruptcy, or
other opera-
tion of law;
and if en-
titled by
assignment
state the
particulars
thereof as,
e.g., "by
deed dated
the day
of 188
made be-
tween So-
and-so of the
one part,"
(f) This
paragraph
is not re-
quired when
the declara-
tion is made
out of the
United
Kingdom.
(g) To be
signed here
by the per-
son making
the declara-
tion.
(h) Signa-
ture and
title of the
authority
before
whom the
declaration
is made.



PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM L

(a) Here
state name
and address
of appli-
cant.

Notice of Intended Exhibition of an Unregistered Design.

(a)

(b) State
"opened"
or "is to
open."

(c) Insert
brief des-
cription of
design, with
drawing.

hereby give notice of my intention to exhibit a

of at the

Exhibition, which (b)

of 188 , under the provisions of the
Patents, Designs, and Trade Marks Act of 1883 (c)

herewith enclose a

(Signed)

Dated the day of 188 .

*To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.*

**PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.**

DESIGNS.

FORM M.

*Request for Correction of Clerical Error or for Entry of New
Address.*

SIR,

I hereby request that

(Signed)

Dated the day of 188 .

*To the Comptroller,
Patent Office, Designs Branch,
25, Southampton Buildings,
Chancery Lane, London, W.C.*

RULES
FOR THE
REGISTRATION OF TRADE MARKS;
WITH
CLASSIFICATION OF GOODS
AND
TABLE OF FEES.

By virtue of the provisions of the Patents, Designs, and Trade Marks Act, 1883, the Board of Trade do hereby make the following rules (a) :—

(a) For power of the Board of Trade to make general rules for classifying goods and regulating the business of the Patent Office, see s. 101.

Preliminary.

1. These rules may be cited as the Trade Marks Rules, 1883, and shall come into operation from and immediately after the 31st day of December, 1883 (b).

(b) For saving as to existing rules, see s. 115.

Interpretation.

2. In the construction of these rules any words herein used defined by the said Act shall have the meanings thereby assigned to them respectively (c). <sup>Interpreta-
tion.</sup>

(c) See s. 117 for definitions of "person," "the Court," "law officer," "the Treasury," "comptroller," "prescribed," &c. See s. 64 for the essential particulars of a trade mark.

Fees.

3. The fees to be paid in pursuance of the said ^{Fees.} Act, so far as it relates to Trade Marks, shall be the fees specified in the first schedule hereto (d).

(d) See page 287.

Forms.

4. The form F in the first schedule to the said ^{Forms.} Act shall be altered or amended by the substitution therefor of the form F in the second schedule in these rules (e).

(e) For form in schedule to Act, see page 176. For form in schedule to rules, see page 290.

5. (1) An application for registration of a trade mark shall be made in the form F in the second schedule to these rules; (2) The remaining forms in such schedule may be used in all cases to which they are applicable.

Classifica-
tion of
goods.

Classification of Goods.

6. For the purposes of trade marks registration and of these rules goods are classified in the manner appearing in the third schedule hereto (*f*).

If any doubt arises as to what class any particular description of goods belong to, the doubt shall be determined by the Comptroller (*g*).

(*f*) See page 308.

(*g*) Wares made of mixed materials, such as cotton and silk, will be included in such one of the classes appropriated to those materials as the registrar may desire.

Application for Registration.

Application
by firm.

7. An application (*h*) for registration of a trade mark, if made by any firm or partnership, may be signed by some one or more members of such firm or partnership, as the case may be.

If the application be made by a body corporate it may be signed by the secretary or other principal officer of such body corporate.

(*h*) For form of application, see second schedule, Trade Marks Rules, form F, page 290. See s. 62, page 113.

Agency.

8. An application for registration and all other communications between the applicant and the Comptroller may be made by or through an agent duly authorised to the satisfaction of the Comptroller (*i*).

(*i*) If the application is signed by an agent, the word "agent" must be added to the signature.

9. On receipt of the application the Comptroller shall furnish the applicant with an acknowledgment thereof. Acknowledgment of application.

10. Where application is made to register a trade mark which was used by the applicant or his predecessors in business before the 13th of August, 1875, the application shall contain a statement of the time during which and of the person by whom it has been so used in respect of the goods mentioned in the application (*j*). Contents of form of application.

(*j*) See note to form F, page 290.

11. Subject to any other directions that may be given by the Comptroller, all applications, notices, counter-statements, representations of marks, papers having representations affixed, or other documents required by the said Act or by these rules to be left with or sent to the Comptroller or to the Cutlers' Company, shall be upon foolscap paper of a size of 13 inches by 8 inches, and shall have on the left hand part thereof a margin of not less than one inch and a half. Size, etc., of documents.

12. In the case of an application for the registration of a trade mark used on any metal goods, other than cutlery, edge tools, and raw steel, the applicant shall state in the specification of goods in the form of application of what metal or metals the goods in respect to which he applies are made (*k*). Qualification of metal goods.

(*k*) See s. 65.

Representations of trade mark.

13. Subject to any other directions that may be given by the Comptroller, three representations (*l*) of each trade mark, except in the case of marks applied for in classes 23 to 35 inclusive, must be supplied upon paper of the size aforesaid, and must be of a durable nature. One of such representations must be made upon or affixed to the form of application, the others upon separate half-sheets. In the case of trade marks exceeding the limits of the foolscap paper of the size aforesaid, such marks may be pasted and folded upon the sheets of foolscap.

In the case of marks applied for in classes 23 to 35 inclusive, the applicant shall supply four representations of each mark for each class.

Where a drawing or other representation or specimen cannot be given in manner aforesaid, a specimen or copy of the trade mark may be sent either of full size or on a reduced scale, and in such form as the Comptroller may think most convenient.

The Comptroller may, if dissatisfied with the representation of a trade mark, require a fresh representation, either before he proceeds with the application or before he registers the trade mark (*m*).

The Comptroller may also, in exceptional cases, deposit in the Patent Office a specimen or copy of any trade mark which cannot conveniently be shown by a representation, and may refer thereto in the register in such manner as he may think fit.

(*l*) S. 62, sub. 3.

(*m*) S. 62, sub. 4.

14. When an application relates to a series of trade marks differing from one another in respect of the particulars mentioned in s. 66 of the said Act, a representation of each trade mark of the series shall be made or affixed upon the form of application and also upon each of the separate half-sheets of paper aforesaid (n). ^{Representations of a series of trade marks.}

(n) S. 66, page 121. For form of representations, see form G, page 291.

15. Wherever a mark consists of or includes words printed in other than Roman character, there shall be given at the foot or on the back of each representation a translation of such words, signed by the applicant or his agent. ^{Translation of foreign characters.}

16. Any application, statement, notice, or other document authorised or required to be left, made, or given at the Patent Office, or to the Comptroller, or to any other person under these rules, may be sent by a prepaid letter through the post, and if so sent shall be deemed to have been left, made, or given respectively at the time when the letter containing the same would be delivered in the ordinary course of post. ^{Mode of sending notices, etc.}

In proving such service or sending, it shall be sufficient to prove that the letter was properly addressed and put into the post (o).

(o) S. 97, page 153.

Exercise of Discretionary Powers.

Hearing by
comp-
troller.

17. Before exercising any discretionary power given to the Comptroller by the said Act adversely to the applicant for registration of a trade mark, the Comptroller shall give him ten days' notice of the time when he may be heard personally or by his agent before the Comptroller (*p*).

(*p*) S. 94, page 152 ; s. 62, sub. 4, page 113.

Notice of
wish to be
heard before
comp-
troller.

18. Within five days from the date when such notice would be delivered in the ordinary course of post, the applicant shall notify to the Comptroller whether or not he intends to be heard upon the matter.

Notification
of decision.

19. The decision of the Comptroller in the exercise of any such discretionary power as aforesaid shall be notified to the applicant.

Appeal to the Board of Trade (q).

Appeal to
Board of
Trade.

20. Where the Comptroller refuses to register a trade mark, and the applicant intends to appeal to the Board of Trade from such refusal, he shall, within one month from the date of the decision appealed against, leave at the Patent Office, Trade Marks Branch, a notice of such his intention (*r*).

(*q*) For form of appeal to Board of Trade, see form H, page 292.

(*r*) S. 62, sub. 4.

21. Such notice shall be accompanied by a statement of the grounds of appeal, and of the applicant's case in support thereof (s). Statement of grounds of appeal.

(s) The grounds should be inserted in a statement of the case by the applicant. See note to form H, page 292.

22. The applicant shall forthwith on leaving such notice send a copy thereof to the Secretary of the Board of Trade, No. 7, Whitehall Gardens, London. Copy of notice to Board of Trade.

23. The Board of Trade may thereupon give such directions (if any) as they may think fit with respect to evidence, or otherwise, for the purpose of the hearing of the appeal by the Board of Trade, or for the purpose of their referring the appeal to the Court to hear and determine the same (t). Directions by Board.

(t) S. 62, sub. 5, page 113.

24. Where the Board of Trade intend to hear the appeal, seven days' notice, or such shorter notice as the Board of Trade may in any particular case direct, of the time and place appointed for the hearing, shall be given to the Comptroller and the applicant. Notice of time of hearing.

Advertisement of Application.

25. Every application shall be advertised by the Comptroller in the official paper, during such times, and in such manner as the Comptroller may direct. Advertisement of application.

If no representation of the trade mark be inserted in the official paper in connection with the advertise-

ment of an application, the Comptroller shall refer in such advertisement to the place or places where a specimen or representation of the trade mark is deposited for exhibition (u).

(u) S. 68, page 122.

Definition of
official
paper.

26. The official paper for the purposes of these rules shall be some paper published under the direction of the Board of Trade, or such other paper as such Board may from time to time direct.

Means of
advertising
trade mark
to be sup-
plied to
official
paper.

27. For the purposes of such advertisement the applicant may be required to furnish a wood block or electrotype (or more than one, if necessary) of the trade mark, of such dimensions as may from time to time be directed by the Comptroller, or with such other information or means of advertising the trade mark as may be required by the Comptroller; and the Comptroller, if dissatisfied with the block or electrotype furnished by the applicant or his agent, may require a fresh block or electrotype before proceeding with the advertisement (v).

Advertise-
ment of
series.

23. When an application relates to a series of trade marks differing from one another in respect of the particulars mentioned in section 66 of the said Act, the applicant may be required to furnish a wood block or electrotype (or more than one, if necessary) of any or of each of the trade marks constituting the series; and the Comptroller may, if he thinks fit, insert with the advertisement of the

application a statement of the manner in respect of which the several trade marks differ from one another (*v*).

(*v*) S. 66, page 121.

Opposition to Registration (w).

29. (1.) Where a case stands for the determination of the Court, under the provisions of s. 69 of the said Act, the Comptroller shall require the applicant within one month, or such further time as the Comptroller may allow, to issue a summons in the chambers of a judge of Her Majesty's High Court of Justice for an order that, notwithstanding the opposition of which notice has been given, the registration of the trade mark be proceeded with by the Comptroller, or to take such other proceedings as may be proper and necessary for the determination of the case by the Court (*x*).

Manner of
bringing
case before
court.

(*w*) For form of notice of opposition, see form I, page 293.

(*x*) S. 69, page 123.

(2.) The applicant shall thereupon issue such summons, or take such other proceedings as aforesaid, within the period of one month above named, or such further time as the Comptroller may allow, and shall also within the like period give notice thereof to the Comptroller.

(3.) If the applicant shall fail to issue such summons, or to take such other proceedings, of

which failure the non-receipt by the Comptroller of the said notice shall be sufficient proof, the applicant shall be deemed to have abandoned his application.

Mode of giving notice that the matter has been brought before the court.

(4.) Such notice to the Comptroller shall be given by delivering at or sending to the Patent Office a copy of the summons or other initiatory proceeding bearing an endorsement of service signed by the applicant or his solicitor, or an endorsement of acceptance of service signed by the opponent or his solicitor.

Register of Trade Marks.

Time of registration of trade marks.

30. As soon as may be after the expiration of two months from the date of the first advertisement of the application (y), the Comptroller shall, subject to any such summons or other proceeding as aforesaid and the determination of the Court thereon, if he is satisfied that the applicant is entitled to registration, and on payment of the prescribed fee (z), enter the name, address, and description of the applicant in the register of trade marks (a) as the registered proprietor of the trade mark in respect of the particular goods or classes of goods described in his application.

(y) For limit of time for proceeding with application, see s. 63.

(z) See first schedule to rules, page 287.

(a) See s. 78, page 133.

31. In case of the death of any applicant for a trade mark after the date of his application, and before the trade mark applied for has been entered on the register, the Comptroller, after the expiration of the prescribed period of advertisement, may, on being satisfied of the applicant's death, enter on the register, in place of the name of such deceased applicant, the name, address, and description of the person owning the goodwill of the business, if such ownership be proved to the satisfaction of the Comptroller (b).

Where applicant dies before registration, the trade mark may be registered for successor to goodwill of business.

(b) S. 70, page 124.

32. Upon registering any trade mark the Comptroller shall enter in the register the date on which the application for registration was received by the Comptroller (which day shall be deemed to be the date of the registration) and such other particulars as he may think necessary (c).

Entries to be made in register.

(c) S. 78, page 133.

33. The Comptroller shall send notice to the applicant of the registration of his trade mark, together with a reference to the advertisement of such trade mark in the official paper.

Notice of registration.

34. Where a person becomes entitled to a registered trade mark by assignment, transmission, or other operation of law, a request for the entry of his name in the register as proprietor of the trade mark shall be addressed to the Comptroller, and left at the Patent Office (d).

Request by subsequent proprietor.

Signature
of request.

35. Such request shall in the case of an individual be made and signed by the person requiring to be registered as proprietor, and in the case of a firm or partnership by some one or more members of such firm or partnership, or in either case by his or their agent respectively duly authorised to the satisfaction of the Comptroller, and in the case of a body corporate by their agent, authorised in like manner (d).

Contents of
request.

36. Every such request shall state the name, address, and description of the person claiming to be entitled to the trade mark (hereinafter called the claimant), and the particulars of the assignment, transmission, or other operation of law, by virtue of which he requires to be entered in the register as proprietor, so as to show the manner in which, and the person or persons to whom, the trade mark has been assigned or transmitted, and so as to show further that it has been so assigned or transmitted in connection with the goodwill of the business concerned in the particular goods or classes of goods for which the trade mark has been registered (d).

(d) For form of request to enter the name of a subsequent proprietor of a trade mark upon the register, see form K, page 295.

Declaration
to accom-
pany re-
quest.

37. Every such request shall be accompanied by a statutory declaration (e) to be thereunder written, verifying the several statements therein,

and declaring that the particulars above described comprise every material fact and document affecting the proprietorship of the trade mark as claimed by such request.

(e) For manner in which, and persons before whom, declaration is to be taken, see rules 58 & 59, page 285.

38. The claimant shall furnish to the Comptroller such other proof of title and of the existence and ownership of such goodwill as aforesaid as he may require for his satisfaction (f). Further proof of title if required.

(f) See s. 87, page 145.

39. A body corporate may be registered as proprietor by its corporate name. Body corporate.

40. The term "applicant" in rules 17, 18, & 19 (g) shall include each of several persons claiming to be registered as proprietor of the same trade mark. Definition of applicant.

(g) See page 270.

41. Whether all of such persons so claiming require to be heard before the Comptroller or not he may, before exercising the discretion vested in him by s. 71 (h) of the said Act, require such persons, or any or either of them, to submit a statement in writing within a time to be notified by him, or to attend before him and make oral explanations with respect to such matters as the Comptroller may require (i). Comptroller may require statement from rival claimants.

(h) See page 125.

Submission
to court of
conflicting
claims.

42. Where each of several persons claims to be registered as proprietor of the same trade mark, and the Comptroller refuses to register any of them until their rights have been determined according to law, the manner in which the rights of such claimants may be submitted to the Court by the Comptroller, or if the Comptroller so require, by the claimants, shall, unless the Court otherwise order, be by a special case ; and such special case shall be filed and proceeded with in like manner as any other special case submitted to the Court, or in such other manner as the Court may direct (i).

(i) See s. 71.

Settlement
of special
case.

43. Where the special case is to be submitted to the parties it may be agreed to by them, or if they differ, may be settled by the Comptroller on payment of the prescribed fees (j).

(j) For form of application to the comptroller for the settlement of a special case on an application to register a trade mark, see form T, page 304.

44. Where an order has been made by the Court in either of the following cases, viz. :

(a.) Allowing an appeal under s. 62 of the said Act (k) ;

(b.) Disallowing an opposition to registration under s. 69 (l) ; or

- (c.) Under the provisions of s. 72, 90, or 92 (*m*) of the said Act,

the person in whose favor such order has been made, or such one of them, if more than one, as the Comptroller may direct, shall forthwith leave at the Patent Office an office copy of such order. The register shall thereupon be rectified or altered, or the purport of such order shall otherwise be duly entered in the register, as the case may be (*n*).

(*k*) See page 113.

(*l*) See page 123.

(*m*) S. 72, page 127 ; s. 90, page 148 ; s. 92, page 150.

(*n*) For form of application under this rule, see form N, page 298.

45. Where a trade mark has been removed from the register for non-payment of the prescribed fee or otherwise, under the provisions of s. 79 of the said Act, the Comptroller shall cause to be entered in the register a record of such removal and the cause thereof (*o*).

Removal of
mark from
register.

(*o*) See page 134.

46. If the registered proprietor of a trade mark send to the Comptroller, together with the prescribed fee, notice of an alteration in his address, the Comptroller shall alter the register accordingly (*p*).

Alteration
of address
in register.

(*p*) For form of notice of application for alteration of address on register of trade mark, see form M, page 297.

Publication
of rectifica-
tion or varia-
tion of
register.

47. Whenever an order is made by the Court for making, expunging, or varying an entry from or in the register, the Comptroller shall, if he thinks that such rectification or variation should be made public, and at the expense of the person applying for the same, publish, by advertisement or otherwise, and in such manner as he thinks just, the circumstances attending the rectification or variation in the register.

Notice to
comptroller
of order of
court for
alteration of
trade mark
under s. 92
of Act.

48. Whenever the registered proprietor of any trade mark intends to apply for the leave of the Court to add to or to alter such trade mark, under s. 92 of the said Act, the notice to be given to the Comptroller shall be given fourteen days at least before such application (q). If leave be granted on such application the applicant shall forthwith supply to the Comptroller such a number of representations of the trade mark as altered as he may deem sufficient.

(q) See page 150.

Inspection of Register.

Hours of
inspection.

49. The Register of Trade Marks shall be open to the inspection (r) of the public, on payment of the prescribed fee, on every weekday between the hours of ten and four, except on the days and at the times following :—

(a.) Christmas Day, Good Friday, the day observed as Her Majesty's birthday, days

observed as days of public fast or thanksgiving, and days observed as holidays at the Bank of England ; or

(b.) Days which may from time to time be notified by a placard posted in a conspicuous place at the Patent Office ;

(c.) Times when the register is required for any purpose of official use.

(r) S. 88, page 147.

Power to dispense with Evidence.

50. Where under these rules any person is required to do any act or thing, or to sign any document, or to make any declaration on behalf of himself or of any body corporate, or any document or evidence is required to be produced to or left with the Comptroller, or at the Patent Office, and it is shown to the satisfaction of the Comptroller that from any reasonable cause such person is unable to do such act or thing, or to sign such document, or to make such declaration, or that such document or evidence cannot be produced or left as aforesaid, it shall be lawful for the Comptroller, with the sanction of the Board of Trade, and upon the production of such other evidence, and subject to such terms as they may think fit, to dispense with any such act or thing, document, declaration, or evidence.

Dispensing
with evi-
dence.

Amendments.

Amend-
ment of
documents.

51. Any document or drawing or other representation of a trade mark for the amending of which no special provision is made by the said Act may be amended, and any irregularity in procedure which in the opinion of the Comptroller may be obviated without detriment to the interests of any person may be corrected, if the Comptroller think fit, and on such terms as he may direct (*s*).

(*s*) For power of comptroller to correct clerical errors, see s. 91, page 149.

Enlargement of Time.

Comptroller
may enlarge
time.

52. The time prescribed by these rules for doing any act, or taking any proceeding thereunder, may be enlarged by the Comptroller, if he think fit, and upon such notice to other parties, and proceedings thereon, and upon such terms, as he may direct.

Cutlers' Company.

Sheffield
applications
in duplicate.

53. All applications to the Cutlers' Company for registration of a trade mark under s 81. of the said Act (*t*), shall be in duplicate, accompanied by the prescribed fees and representations (*u*).

(*t*) See page 136.

(*u*) See application for registration, rules 7—16, pp. 266-269. S. 81, sub. 7.

54. The Cutlers' Company shall, within seven days of the receipt by them of an application to register a trade mark, send to the Comptroller one copy of such application by way of notice thereof, together with two representations of the mark for each class for which the applicant seeks registration.

Notice to
com-
roller.

55. (1.) The time within which the Comptroller shall give notice to the Cutlers' Company of any objection he may have to the acceptance of an application for registration made to the said Company shall be one month from the date of the receipt by the Comptroller of the notice from the said Company of the making of the application.

Time within
which
comptroller
may object
to applica-
tion made
at Sheffield.

(2.) If no such objection is made by the Comptroller, the Cutlers' Company shall require the applicant to send the Comptroller a wood block or electrotype as the Comptroller may direct, and the Comptroller shall, if satisfied with such wood block or electrotype, advertise the application in the same manner as an application made to him at the Patent Office.

Advertise-
ment of
application
made at
Sheffield.

(3.) The manner in which the Comptroller shall notify to the Cutlers' Company an application and proceedings thereon made as mentioned in sub. 8 of s. 81 of the said Act (v) shall be by sending to the Cutlers' Company a copy of the official paper

Manner of
notifying to
Cutlers'
Company
application
received by
com-
ptroller.

containing the application of which notice is required to be given, with a note distinguishing such application.

(v) See page 136.

Similarity
of proceed-
ings at
London and
at Sheffield.

56. The provisions of these rules as to forms, representations, the proceedings on opposition to registration, registration, and all subsequent proceedings shall, as far as the circumstances allow, apply to all applications to register made to the Cutlers' Company, and to all proceedings consequent thereon (*w*).

(*w*) For form of appeal from Cutlers' Company at Sheffield to comptroller, see form W, page 307.

Certificates.

Certificate
by comp-
troller.

57. The Comptroller, when required for the purpose of any legal proceeding or other special purpose to give a certificate as to any entry, matter, or thing which he is authorised by the said Act or any of these rules to make or do, may, on receipt of a request in writing (*x*), and on payment of the prescribed fee (*y*), give such certificate, and shall specify on the face of it the legal proceeding or other purpose for which such certificate is granted.

(*x*) See s. 96, page 152. For form of request for certificate of registration for use in legal proceedings, see form S, page 303 ; and for form for use in obtaining registration abroad, see form R, page 302. For form of request for certificate of refusal, see form L, page 296.

(*y*) See first schedule, page 287.

Declarations (z).

(z) For declaration on behalf of infant, lunatic, &c., see page 154.

58. The statutory declarations required by the said Act and these rules, or used in any proceedings thereunder, shall be made and subscribed as follows:

Manner in which, and persons before whom, declaration is to be taken.

- (a.) In the United Kingdom, before any justice of the peace, or any commissioner or other officer authorised by law in any part of the United Kingdom to administer an oath for the purpose of any legal proceeding;
- (b.) In any other part of Her Majesty's dominions before any Court, judge, justice of the peace, or any officer authorised by law to administer an oath there for the purpose of a legal proceeding; and
- (c.) If made out of Her Majesty's dominions, before a British minister, or person exercising the functions of a British minister, or a consul, vice-consul, or other persons exercising the functions of a British consul, or a notary public, or before a judge or magistrate.

59. Any document purporting to have affixed, impressed, or subscribed thereto or thereon the seal or signature of any person hereby authorised to take such declaration in testimony of such

Notice of seal of officer taking declaration to prove itself.

declaration having been made and subscribed to before him, may be admitted by the Comptroller without proof of the genuineness of any such seal or signature, or of the official character of such person or his authority to take such declaration.

Repeal.

Previous
rules
repealed.

60. All general rules as to the registration of trade marks heretofore made by the Lord Chancellor under the Trade Marks Registration Act, 1875, and in force on the 31st day of December, 1883, shall be, and they are hereby repealed, as from that date, without prejudice, nevertheless, to any proceeding which may have been taken under such rules (a).

(a) For saving for existing rules, see s. 115, page 167.

J. CHAMBERLAIN,

President of the Board of Trade.

21st December, 1883.

SCHEDULES.

FIRST SCHEDULE.

FEES.

	£ s. d.
1. On application to register a trade mark for one or more articles included in one class . . .	0 5 0
2. On appeal to Board of Trade on refusal of Comptroller to register	1 0 0
3. For registration of a trade mark for one or more articles included in one class	1 0 0
4. For registering a series of trade marks, for every additional representation after the first in each class	0 5 0
5. For entering notice of opposition, for each trade mark, whether in one or more classes	1 0 0
6. On application to register a subsequent proprietor in cases of assignment or transmission, the first mark	1 0 0
7. For every additional mark assigned or transmitted at the same time	0 2 0
8. For certificate of refusal to register a trade mark under section 77	1 0 0
9. For certificate of refusal at the same time for more than one trade mark, for each additional trade mark after the first	0 10 0
10. For continuance of mark at expiration of 14 years	1 0 0
11. Additional fee where fee is paid within three months after expiration of 14 years . . .	0 10 0
12. Additional fee for restoration of trade mark where removed for non-payment of fee .	1 0 0
13. For altering address on the register, for every mark	0 5 0
14. For every entry in the register of a rectification thereof or an alteration therein, not otherwise charged	0 10 0

15. For cancelling the entry or part of the entry of a trade mark upon the register, on the application of the owner of such trade mark	£	s.	d.
	0	5	0
16. On request to Comptroller to correct a clerical error	0	5	0
17. For certificate of registration to be used in legal proceedings	0	10	0
18. For certificate of registration to be used for the purpose of obtaining registration in foreign countries	0	5	0
19. For copy of notification of registration	0	2	0
20. Settling a special case by Comptroller	2	0	0
21. For inspecting register, for every quarter of an hour	0	1	0
22. For making a search amongst the classified representations of trade marks, for every quarter of an hour	0	1	0
23. For office copy of documents, for every 100 words (but never less than one shilling).	0	0	4
24. For certifying office copies, MS. or printed	0	1	0
25. For certificate of Comptroller under section 96	0	5	0
26. In cases where a trade mark requires a greater space than two inches of the depth of the page of the <i>Trade Marks Journal</i> , for each additional inch or part of an inch	0	2	0
27. Manchester Trade Marks Office	Same as above		
28. Sheffield Marks	Same as above		
29. On appeal from Cutlers' Company, Sheffield, to Comptroller	1	0	0

J. CHAMBERLAIN,

President of the Board of Trade.

Approved,

CHARLES C. COTES,

HERBERT J. GLADSTONE,

Lords Commissioners of

Her Majesty's Treasury.

4th December, 1883.

SECOND SCHEDULE.

FORMS.

	Page
Form of Application for Registration of Trade Mark	290
„ Additional Representation of Trade Mark	291
„ Appeal to Board of Trade	292
„ Transmission of Registration Fee	293
„ Notice of Opposition	294
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PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM F.

*Application for Registration of Trade Mark.*TRADE
MARKS.

One representation to be fixed within this square, and two others to be sent on separate sheets of foolscap.

Representations of a larger size may be folded, but must be mounted upon lines and affixed hereto.

(a) Only goods contained in one and the same class should be set out here.

A separate application form is required for each separate class.

(b) Here insert legibly the full name, address, and business of the individual, firm, or company. In the case of an individual, add trading style (if any).

(c) After to "claim to be the proprietors thereof" in the case of a firm or company.

You are hereby requested to register the accompanying Trade Mark in Class , in respect of (a)

in the name of (b)

who claims to be the proprietor thereof (c).

(Signed)

Dated this day of 18 .

To the Comptroller,

Patent Office, Trade Marks Branch,

25, Southampton Buildings, London, W.

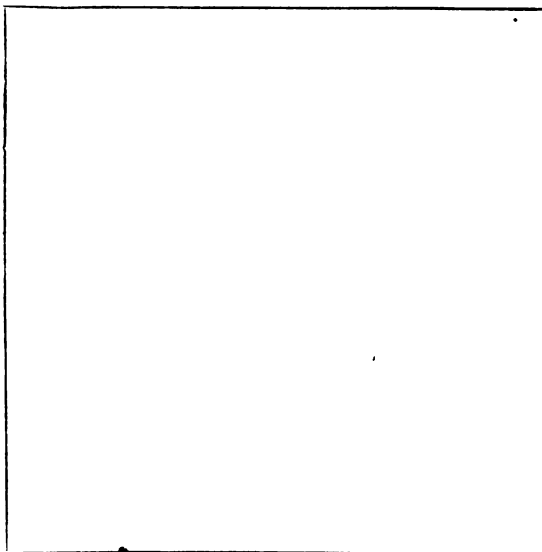
NOTE.—If the Trade Mark has been in use in respect of the goods since before August 13, 1875, state length of such user. "agent"

(d) To be signed by the applicant; or, in the case of a firm, by a partner, adding "A member of the firm," or, in the case of a company, by the secretary or other principal officer, adding, "for the company." Or, in any case, an agent may sign, adding "agent."

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM G.

*Additional Representation of Trade Mark, to accompany
Application for Registration.*



One representation of the trade mark to be affixed within this square. It must correspond exactly, in all respects, with the representation affixed to the application form.

Any representation of a larger size than foolscap may be folded, but must then be mounted upon linen and affixed hereto.

Two of these Additional Representations of the Trade Mark must accompany *each* Form of Application.

In the case of a Trade Mark claimed in one of the Classes 23 to 35, Three of these Additional Representations of the Mark must accompany the Form of Application.

**TRADE
MARKS.**

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM H.

*Form of Appeal to Board of Trade on Refusal of Comptroller
to Register a Trade Mark.*

SIR,

I hereby give notice of my intention to appeal against
your decision upon my application to register a Trade Mark
No. _____ in Class _____ for _____

* The statement of the case to be Trade. and I beg to submit my case* for the decision of the Board of

written upon foolscap paper (on one side only), with a margin of two inches on the left-hand side thereof.

I am, Sir,

Yours obedient Servant,

*To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.*

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.TRADE
MARKS.

FORM I.

Fee for Registration of a Trade Mark.

SIR,

In reply to your request I hereby transmit the prescribed fee for the registration of the Trade Mark No.
in Class

I am, Sir,

Your obedient Servant,

*To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings
London.*

TRADE MARKS.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM J.

Notice of Opposition to Application for Registration.

[To be accompanied by an unstamped duplicate.]

In the matter of an Application,
No. by
of

SIR,

Notice is hereby given that I
of
oppose the Registration of the Trade Mark advertised under
the above number for Class in the Trade Marks
Journal of the day of 188 , No. , page .

The grounds of opposition are as follows :

To be dated
and signed
at the end
by the
opponent or
his solicitor.

*To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.*

PATENTS, DESIGNS, AND TRADE MARKS ACT.
1883.

FORM K.

TRADE
MARKS.

Request to enter Name of Subsequent Proprietor of Trade Mark upon the Register, with Declaration in support thereof.

I, (a)

hereby request that you will enter (b) name (c)
in the Register of Trade Marks as proprietor of the
Trade Mark No. in Class

(d) entitled to the said Trade Mark and to the
goodwill of the business concerned in the goods with respect
to which the said Trade Mark is registered.

(e)

And I do solemnly and sincerely declare that the above
several statements are true, and the particulars above set out
comprise every material fact and document affecting the
proprietorship of the said Trade Mark as above claimed.

(f) And I make this solemn declaration conscientiously
believing the same to be true, and by virtue of the provisions
of the Statutory Declarations Act, 1835.

(g)

Declared at

this day of 188

Before me,

(h)

To the Comptroller,

Patent Office, Trade Marks Branch,
25, Southampton Buildings, London.

(a) Or We.
Here insert
name, full
address,
and descrip-
tion.

(b) My or
our.

(c) Or
names.

(d) I am, or
we are.

(e) Here

state

whether

trade mark

transmitted

by death,

marriage,

bank-

ruptcy, or

other opera-

tion of law,

and if en-

titled by

assignment

state the

particulars

thereof as,

e.g., "by

deed dated

the day of

188

made be-

tween So-

and-So of

the one

part."

(7) This

paragraph

is not re-

quired

when the

declaration

is made out

of the

United

Kingdom.

(g) To be

signed here

by the per-

son making

the declara-

tion.

(h) Signa-

ture and

title of the

authority

before

whom the

declaration

is made.

TRADE MARKS.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM L.

*Request for Certificate of Refusal to Register a Trade Mark
in use before 13th August, 1875.*

In the matter of an Application
for registration of an old Trade
Mark, No.
in Class .

SIR

I,

of

the Applicant in the above matter, hereby request you to
furnish me with your Certificate of Refusal to register the
said Trade Mark.

* Signature
of appli-
cant.

*

Dated this

day of

188

To the Comptroller,

*Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.*

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

**TRADE
MARKS.**

FORM M.

*Notice of Application for Alteration of Address on Register
of Trade Marks.*

In the matter of the Trade Mark,
No. _____ registered
in Class _____

SIR,

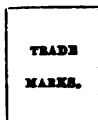
Notice is hereby given that I
of
the registered Proprietor of the Trade Mark numbered as
above desire that my address on the Register of Trade Marks
be altered to

Dated this day of 188 .

✻

* Signature
of pro-
priator.

*To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.*



PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM N.

*Notice of Application for Alteration or Rectification of
Register of Trade Marks.*

In the matter of the Trade Mark,
No. , registered
in Class in the name of

SIR,

NOTICE is hereby given that by an Order of the Court
made on the day of 18 , it was directed
that the entry on the Register of Trade Marks in respect of the
Trade Mark numbered as above should be rectified in the
manner therein specified.

An Office Copy of the Order of the Court is enclosed
herewith.

Dated this day of 188 .

* To be
signed by
the person
interested
or his agent.

*

*To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings, London.*

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.TRADE
MARKS.

FORM O.

*Form of Application by Proprietor of Registered Trade Mark
to Cancel Entry on Register.*

Trade Mark No. Class advertised in
"Trade Marks Journal," No. , page .
Name of Registered Proprietor or Firm

Place of Business

I, the undersigned,
of

[or I, the undersigned,
a member of the Firm of
of

on behalf of my said

Firm]

apply that the entry upon the Register of the Trade Marks in
Class of the Trade Mark No. may be cancelled.

The day of 188 .

(Signed)

This is the statement marked "O" referred to in the
Declaration of made
before me the of 188 .

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM P.

Form of Declaration in support of Application for Cancellation of Trade Mark by owner.

I, _____ of _____ ; [or
I _____ a member of the Firm of
_____ of _____

do hereby solemnly and sincerely declare, to the best of my knowledge and belief, as follows :—

(1) The Application signed by me, and dated the _____ day of _____ 18____, and marked with the letter "O," and shown to me at the time of making this Declaration, is true.

(2) I am the person whose name appears on the Register of Trade Marks as the Proprietor of the Trade Mark referred to in the said Application marked with the letter "O."

[or My said Firm is the Firm whose name appears on the Register of Trade Marks as the Proprietor of the Trade Mark referred to in the said Application marked with the letter "O."

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

(Signed)

Declared at
this _____ day of _____
188____.

Before me,

If the declaration be made before a Commissioner to administer oaths it will require to be stamped with a 2s. 6d impressed Inland Revenue stamp.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.



FORM Q.

*Form of Request for Correction of Clerical Error in Regard
to a Trade Mark.*

SIR,

I hereby request that

*To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.*

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

TRADE
MARKS.

FORM R.

*Request for Certificate of Registration of Trade Mark for Use
in Obtaining Registration Abroad.*

In the matter of the Trade Mark,
No. , registered in
Class in the name of

SIR,

I

of ,
the registered proprietor of the above Trade Mark, hereby
request you to furnish me with your Certificate of Registration

* Here state for use in obtaining registration of the same in *
name of
country in
which
registration
is to be
sought.

†

Dated this day of 188 .

*To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.*

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.TRADE
MARKS.

FORM S.

*Request for Certificate of Registration of Trade Mark for Use
in Legal Proceedings.*

In the matter of the Trade Mark,
No. , registered in
Class in the name of

SIR,

I

of

the registered proprietor of the above Trade Mark, hereby
request you to furnish me with your Certificate of Registration
for use in the following Legal Proceedings*

* Here state
exact title
of legal pro-
ceedings.

†

† Signature.

Dated this

day of

188 .

*To the Comptroller,**Patent Office, Trade Marks Branch,**25, Southampton Buildings,**London.*

TRADE MARKS.

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM T.

*Application for Settlement of a Special Case on Application
to Register a Trade Mark.*

In the matter of the Application
of _____ and
of the Application of _____

SIR,

NOTICE is hereby given that I, _____,
of _____,
and I, _____,

are unable agree upon the facts on which the opinion of the
Court is to be taken, and that we request you to fix a day on
which we may attend before you and obtain your finding on
the matters of fact to be submitted to the Court as settled.

Dated this _____ day of _____ 188 .

* To be
signed by
both
parties.

*
*

*To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.*

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

TRADE
MARKS.

FORM U.

*General Certificate of Comptroller-General as to Application
for or Registration of a Trade Mark.*

Patent Office, Trade Marks Branch,
London,

188

I,
Comptroller-General of Patents, Designs, and Trade Marks,
hereby certify



PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

FORM V.

*Request for Copy of Official Notification of Registration of
Trade Mark.*

In the matter of the Trade Mark
No. , registered
in Class .

SIR,

I

of

the registered proprietor of the Trade Mark above named,
hereby request that you will furnish me with a copy of the
official notification of the registration of the same.

* Signature.

*

Dated this

day of

188 .

*To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.*

PATENTS, DESIGNS, AND TRADE MARKS ACT,
1883.

TRADE
MARKS.

FORM W.

*Form of Appeal from Cutlers' Company at Sheffield to
Comptroller.*

[To be accompanied by an unstamped duplicate.]

SIR,

I HEREBY give notice of appeal against the decision of
the Cutlers' Company of Sheffield in regard to my application
for registration of a Trade Mark No. in Class
for
and I beg to submit my case* for your decision accordingly.

* The state-
ment of the
case to be
written
upon fools-
cap paper
(on one side
only), with
a margin of
two inches
on the left-
hand side
thereof.

†

Dated this day of 188 . †Signature.

*To the Comptroller,
Patent Office, Trade Marks Branch,
25, Southampton Buildings,
London.*

THIRD SCHEDULE.

GENERAL NOTE.

Any wares made of mixed materials (for example, of both cotton and silk) shall be included in such one of the classes appropriated to those materials as the registrar may desire.

CLASSIFICATION OF GOODS.

Illustrations.

Note.—Goods are mentioned in this column by way of illustration, and not as an exhaustive list of the contents of a class.

CLASS 1.

Chemical substances used in manufactures, photography, philosophical research, and anti-corrosives.

Such as—

Acids, including vegetable acids.

Alkalies.

Artists' colours.

Pigments.

Mineral dyes.

CLASS 2.

Chemical substances used for agricultural, horticultural, veterinary, and sanitary purposes.	Such as— Artificial manure. Cattle medicines. Deodorisers. Vermin destroyers.
--	---

CLASS 3.

Chemical substances prepared for use in medicine and pharmacy.	Such as— Cod liver oil. Medicated articles. Patent medicines. Plasters. Rhubarb.
--	---

CLASS 4.

Raw or partly prepared vegetable, animal, and mineral substances used in manufactures, not included in other classes.	Such as— Resins. Oils used in manufactures and not included in other classes. Dyes, other than mineral. Tanning substances. Fibrous substances (<i>e.g.</i> , cotton, hemp, flax, jute). Wool. Silk. Bristles. Hair. Feathers. Cork. Seeds. Coal. Coke. Bone. Sponge.
---	--

CLASS 5.

Unwrought and partly wrought metals used in manufacture.

Such as—

Iron and steel, pig or cast.

Iron, rough.

„ bar and rail, including rails for railways.

„ bolt and rod.

„ sheet, and boiler and armour plates.

„ hoop.

Lead, pig.

„ rolled.

„ sheet.

Wire.

Copper.

Zinc.

Gold, in ingots.

CLASS 6.

Machinery of all kinds, and parts of machinery, except agricultural and horticultural machines included in Class 7.

Such as—

Steam engines.

Boilers.

Pneumatic machines.

Hydraulic machines.

Locomotives.

Sewing machines.

Weighing machines.

Machine tools.

Mining machinery.

Fire engines.

CLASS 7.

Agricultural and horticultural machinery, and parts of such machinery.

Such as—

Ploughs.

Drilling machines.

Reaping machines.

Thrashing machines.

Churns.

Cyder presses.

Chaff cutters.

CLASS 8.

Philosophical instruments, scientific instruments, and apparatus for useful purposes. Instruments and apparatus for teaching.

Such as—

Mathematical instruments.

Gauges.

Logs.

Spectacles.

Educational appliances.

CLASS 9.

Musical instruments.

CLASS 10.

Horological instruments.

CLASS 11.

Instruments, apparatus, and contrivances, not medicated, for surgical or curative purposes, or in relation to the health of men or animals.

Such as—

Bandages.

Friction gloves.

Lancets.

Fleams.

Enemas.

CLASS 12.

Cutlery and edge tools.

Such as—

Knives.

Forks.

Scissors.

Shears.

Files.

Saws.

CLASS 13.

Metal goods not included in other classes.

Such as—

Anvils.

Keys.

Basins (metal).

Needles.

Hoes.

Shovels.

Corkscrews.

CLASS 14.

Goods of precious metals (including aluminium, nickel, Britannia metal, &c.) and jewellery, and imitations of such goods and jewellery.

Such as—

Plate.

Clock cases and pencil cases of such metals.

Sheffield and other plated goods.

Gilt and ormolu work.

CLASS 15.

Glass.

Such as—

Window and plate glass.

Painted glass.

Glass mosaic.

Glass beads.

CLASS 16.

Porcelain and earthenware.

Such as—

China.

Stoneware.

Terra Cotta.

Statuary porcelain.

Tiles.

Bricks.

CLASS 17.

Manufactures from mineral and other substances for building or decoration.

Such as—

Cement.

Plaster.

Imitation marble.

Asphalt.

CLASS 18.

Engineering, architectural, and building contrivances.

Such as—

Diving apparatus.

Warming apparatus.

Ventilating apparatus.

Filtering apparatus.

Lighting contrivances.

Drainage contrivances.

Electric and pneumatic bells.

CLASS 19.

Arms, ammunition, and stores
not included in Class 20.

Such as—
Cannon.
Small-arms.
Fowling pieces.
Swords.
Shot and other projectiles.
Camp equipage.
Equipments.

CLASS 20.

Explosive substances.

Such as
Gunpowder.
Gun-cotton.
Dynamite.
Fog-signals.
Percussion caps.
Fireworks.
Cartridges.

CLASS 21.

Naval architectural contri-
vances and naval equip-
ments not included in
Classes 19 and 20.

Such as—
Boats.
Anchors.
Chain cables.
Rigging.

CLASS 22.

Carriages.

Such as—
Railway carriages
Waggons.
Railway trucks.
Bicycles.
Bath chairs.

CLASS 23.

Cotton yarn and thread.

Such as—

Sewing cotton on spools or
reels.Sewing cotton not on spools
or reels.

Dyed cotton yarns.

CLASS 24.

Cotton piece goods of all
kinds.

Such as—

Cotton shirtings.

Long cloth.

CLASS 25.

Cotton goods not included in
Classes 23, 24, or 38.

Such as—

Cotton lace,

Cotton braids.

Cotton tapes.

CLASS 26.

Linen and hemp yarn and
thread.

CLASS 27.

Linen and hemp piece goods.

CLASS 28.

Linen and hemp goods not
included in Classes 26, 27,
and 50.

CLASS 29.

Jute yarns and tissues, and
other articles made of jute
not included in Class 50.

CLASS 30.

Silk, spun, thrown, or sewing.

CLASS 31.

Silk piece goods.

CLASS 32.

Other silk goods not included
in Classes 30 and 31.

CLASS 33.

Yarns of wool, worsted, or
hair.

CLASS 34.

Cloths and stuffs of wool,
worsted, or hair.

CLASS 35.

Woollen and worsted and
hair goods not included in
Classes 33 and 34.

CLASS 36.

Carpets, floor-cloth, and oil-cloth.

Such as—
Drugget.
Mats and matting.
Rugs.

CLASS 37.

Leather, skins unwrought and wrought, and articles made of leather not included in other classes.

Such as—
Saddlery.
Harness.
Whips.
Portmanteaus.
Furs.

CLASS 38.

Articles of clothing.

Such as—
Hats of all kinds.
Caps and bonnets.
Hosiery.
Gloves.
Boots and shoes.
Other ready-made clothing.

CLASS 39.

Paper (except paper-hanging, stationery, and book-binding).

Such as—
Envelopes.
Sealing wax.
Pens (except gold pens).
Ink.
Playing cards.
Blotting cases.
Copying presses.

CLASS 40.

Goods manufactured from india-rubber and gutta-percha not included in other classes.

CLASS 41.

Furniture and upholstery.

Such as—
Paper hangings.
Papier-mâché.
Mirrors.
Mattresses.

CLASS 42.

Substances used as food, or as ingredients in food.

Such as—
Cereals.
Pulses.
Olive oil.
Hops.
Malt.
Dried fruits.
Tea.
Sago.
Salt.
Sugar.
Preserved meats.
Confectionery.
Oil cakes.
Pickles.
Vinegar.
Beer clarifiers.

CLASS 43.

Fermented liquors and spirits.

Such as—
Beer.
Cyder.
Wine.
Whisky.
Liqueurs.

CLASS 44.

**Mineral and aerated waters,
natural and artificial, in-
cluding ginger-beer.**

CLASS 45.

Tobacco, whether manufactured or unmanufactured.

CLASS 46.

Seeds for agricultural and horticultural purposes.

CLASS 47.

Candles, common soap, detergents; illuminating, heating, or lubricating oils; matches; and starch, blue, and other preparations for laundry purposes.

Such as—

Washing powders.
Benzine collas.

CLASS 48.

Perfumery (including toilet articles, preparations for the teeth and hair, and perfumed soap).

CLASS 49.

Games of all kinds and sporting articles not included in other classes.

Such as—

Billiard tables.
Roller skates.
Fishing nets and lines.
Toys.

CLASS 50.

Miscellaneous, including—

Such as—

- (1.) Goods manufactured from ivory, bone, or wood, not included in other classes.
- (2.) Goods manufactured from straw or grass, not included in other classes.
- (3.) Goods manufactured from animal and vegetable substances, not included in other classes.
- (4.) Tobacco pipes.
- (5.) Umbrellas, walking-sticks, brushes, and combs.
- (6.) Furniture cream, plate powder.
- (7.) Tarpaulins, tents, rick-cloths, rope, twine.
- (8.) Buttons of all kinds, other than of precious metal or imitations thereof.
- (9.) Packing and hose of all kinds.
- (10.) Goods not included in the foregoing classes.

J. CHAMBERLAIN,
President of the Board of Trade.

21st December, 1883.

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